No. 77-832

In the Supreme Court of the United States

OCTOBER TERM, 1977

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM, PETITIONER

v.

FIRST LINCOLNWOOD CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WADE H. MCCREE, JR.,
Solicitor General,

BARBARA ALLEN BABCOCK,
Assistant Attorney General,

RONALD R. GLANCZ,
MARK N. MUTTERPERL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

CITATIONS

Cases:

Cases—Continued

Statutes and regulations:

Statutes and regulations—Continued

Miscellaneous:

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The Solicitor General, on behalf of the Board of Governors of the Federal Reserve System, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals on rehearing *en banc* (App. A, *infra*, pp. 1a-12a) is reported at 560 F.2d 258. The initial panel opinion of the court of appeals (App. C, *infra*, pp. 15a-32a) is reported

at 546 F.2d 718. The order of the Board of Governors of the Federal Reserve System (App. C, *infra*, pp. 24a-27a) is reprinted as an appendix to the initial panel opinion of the court of appeals and is reported at 62 Fed. Res. Bull. 153.

JURISDICTION

The judgment of the court of appeals on rehearing *en banc* (App. B, *infra*, pp. 13a-14a) was entered on July 13, 1977. On October 4, 1977, Mr. Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including November 10, 1977, and on November 1, 1977, he further extended the time to and including December 10, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether under Section 3 of the Bank Holding Company Act the Federal Reserve Board must approve an application to form a new bank holding company, even though it believes that the financial structure of the company would be unsound, unless it can find that formation of the company would cause or worsen unsound financial conditions in the bank.

STATUTE INVOLVED

Section 3 of the Bank Holding Company Act of 1956, 70 Stat. 134-135, as amended, 12 U.S.C. 1842, provides in pertinent part:

> (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; * * *.
>
> * * * * *
>
> (c) The Board shall not approve—
>
> (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
>
> (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
>
> In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

STATEMENT

1. Under Section 3(a) of the Bank Holding Company Act of 1956, 70 Stat. 134, as amended, 12 U.S.C. 1842(a), it is "unlawful, except with the prior approval of the Board [of Governors of the Federal Reserve System], * * * for any action to be taken that causes any company to become a bank holding company * * *."[1] In considering whether to approve an application for formation of a bank holding company, the Board "[i]n every case * * * shall take into consideration the financial and managerial resources and future prospects of the company * * * and the banks concerned, and the convenience and needs of the community to be served." Section 3(c) of the Act, as amended, 12 U.S.C. 1842(c).[2]

[1] A "bank holding company" is defined in Section 2(a) of the Act, as amended, 12 U.S.C. 1841(a), as "any company which has control over any bank [or] over any company that is or becomes a bank holding company * * *." "[A] company has control over a bank * * * if [*inter alia*] * * * the company * * * owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank * * *" (*ibid.*).

[2] Section 3(c) also directs that "[t]he Board shall not approve—(1) any acquisition or merger or consolidation * * * which would result in a monopoly, or which would be in furtherance of any * * * conspiracy to monopolize * * * the business of banking * * *, or (2) any other proposed acquisition or merger or consolidation * * * whose effect * * * may be substantially to lessen competition * * *, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."

2. Respondent is a corporation organized under the laws of Illinois for the purpose of becoming a bank holding company through the acquisition of approximately 80 percent of the common stock of First National Bank of Lincolnwood (App. C, *infra*, pp. 18a, 24a). The acquisition would be effected by the transfer to respondent of shares in the Bank's common stock now held by individuals, in exchange for respondent's own securities and respondent's assumption of a debt of $3.7 million currently owed by those individuals and secured by their shares of the Bank's stock (*ibid.*).

Because the acquisition would cause respondent to become a bank holding company, it required the Board's approval under Section 3 of the Act. After considering, *inter alia*, the financial and managerial resources and future prospects of both respondent and the Bank, the Board denied approval of the acquisition (App. C, *infra*, pp. 24a-27a). The Board determined that the $3.7 million acquisition debt, which respondent proposed to service primarily through earnings of the Bank, would not permit "the financial flexibility necessary to meet [respondent's] annual debt service requirements while maintaining adequate capital at [the] Bank" (App. C, *infra*, p. 25a). The Board also was concerned that "the financial requirements imposed upon [respondent] as a result of the acquisition debt, and uncertainty as to the source of funds for [the] Bank's proposed capital injections,[3]

[3] In its order, the Board noted (App. C, *infra*, p. 25a) that the "Bank plans to augment its capital accounts through the

could prevent [respondent] from resolving any unforeseen problems that may arise at [the] Bank" (App. C, *infra*, pp. 25a-26a). The Board concluded, on the basis of these "banking factors, and other facts of record, * * * that it would not be in the public interest to approve the formation of a bank holding company with an initial debt structure that could result in the weakening of [the] Bank's overall financial condition" (App. C, *infra*, p. 26a).

3. Respondent petitioned to the United States Court of Appeals for the Seventh Circuit for review of the Board's order. See Section 9 of the Act, as amended, 12 U.S.C. 1848. A panel of the court of appeals, with one judge dissenting, affirmed, stating that "we have no difficulty in finding that there is substantial evidence to support the denial of [respondent's] application" (App. C, *infra*, p. 19a).

On rehearing *en banc*, however, the court of appeals set aside the Board's order (App. A, *infra*, pp. 1a-12a). The court reasoned that although "the Board is empowered to deny approval of a bank acquisition upon finding it not to be in the public interest for reasons other than an anticompetitive tendency * * *, the condition or tendency deemed not to be in the public interest must be caused or enhanced by the proposed transaction" (App. A, *infra*, p. 7a). The court ruled that the Board could not "consider questions of bank soundness and public need apart from how these would be altered by formation * * * of a bank holding company" (App. A, *infra*, p. 9a).

The court concluded that respondent's acquisition of the Bank would have no adverse effect on the bank's financial condition (App. A, *infra*, p. 10a). The court regarded respondent's assumption of a substantial indebtedness, even in light of the Bank's low capitalization, to be irrelevant, because the indebtedness was simply being shifted from the Bank's current individual shareholders. The acquisition, the court concluded, would not impair "the soundness of operation of the bank" (App. A, *infra*, p. 10a). To the contrary, the court expressed the view that "[t]he only identified effects of the acquisition [*i.e.*, the prospect of a tax savings,[4] and the proposed infusion of capital (see note 3, *supra*)] militate in favor of the acquisition" (App. A, *infra*, pp. 11a-12a). The court of appeals therefore remanded the matter to the Board for its approval of respondent's application unless "relevant circumstances * * * have changed" (App. A, *infra*, p. 12a).

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sale of $1.1 million in equity capital and $1.0 million debt capital within three to six months of approval of [respondent's] application * * *."

[4] Because respondent would assume the $3.7 million debt of the individual shareholders, it would be able, by filing a consolidated tax return, to deduct interest on the debt against the Bank's earned income. Any resulting increase in funds to the Bank (potentially $130,000 in the first year, declining thereafter) would be available to respondent as tax free intercorporate dividends for servicing the debt (see App. C, *infra*, pp. 18a-19a). See 26 U.S.C. 1501; 26 C.F.R. 1.502-14(a)(1) (1976).

REASONS FOR GRANTING THE PETITION

1. This case presents an important question concerning the Board's authority to disapprove formation of bank holding companies. As required by Section 3 of the Bank Holding Company Act, the Board "[i]n every case [involving an application to form a bank holding company] * * * take[s] into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned * * *." The Board's practice has been to deny approval of such applications where the resources and prospects of the holding company or the bank do not meet certain standards.

The holding below upsets that practice by limiting the Board's authority to deny approval of such applications to cases in which the formation of a bank holding company would create or worsen adverse financial conditions in the bank. Since the transfer of ownership of a bank from individuals to a newly formed company is in itself not directly likely to have such results, this limitation on the Board's authority in effect renders the mandate of Section 3 of the Act meaningless in such cases. The court of appeals' holding requires the Board virtually to rubberstamp any decision of individual shareholders to restructure their ownership of a bank in the form of a holding company, without regard to the issues of financial and managerial soundness that Congress has instructed the Board to consider.

Bank holding companies control a substantial part of the banking industry,[5] and the standards set by the Board to govern formation of such companies have been effective in helping to maintain the integrity and stability of that segment of the industry. By adopting an improperly narrow construction of the Board's powers under Section 3, the court of appeals has wrongly impeded the Board's ability to safeguard the banking public against the formation of unsound bank holding companies.

The immediate effect of limiting the Board's authority to regulate the formation of bank holding companies may well be to encourage such companies to begin their corporate life with dangerously excessive amounts of debt. There are tax advantages to minimizing the amount of equity supplied by the individual shareholders and maximizing the amount of debt incurred by a holding company;[6] the decision below largely removes the regulatory restraints that previously have been imposed by the Board in order to ensure that the pursuit of those advantages did not threaten the public interest in the financial sta-

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[5] As of December 31, 1973, banking subsidiaries of holding companies held 65.5 percent of all commercial deposits in the United States. *The Federal Reserve System, Purposes and Functions* 111 (1974).

[6] In addition to the advantages resulting from a holding company's assumption of its individual shareholders' own debts (see note 4, *supra*), there is the further potential advantage that a company's payment of interest on any debts it owes to its own shareholders would, unlike dividends, be deductible.

bility of the nation's banking system.[7] In these circumstances, this case warrants review despite the absence of a conflict among the circuits.

2. The court of appeals erred in holding that the Board may not "consider questions of bank soundness and public need apart from how these would be altered by formation * * * of a bank holding company" (App. A, *infra*, p. 9a). Section 3(c) of the Act is not so narrowly worded. The language of that provision contemplates a general assessment of the conditions and prospects of both the holding company and the bank concerned. If the Board assesses the condition and prospects unfavorably, as it did in this case, it may on that basis alone disapprove the formation of a holding company. The Board is not required to go further and find, as the court held, that the establishment of a holding company by itself would have an immediate negative impact on the bank.

The "financial and managerial resources and future prospects" of a bank or bank holding company are traditional "banking factors," which federal banking agencies are "accustomed to review[ing] and consider[ing]" in the exercise of their discretion in the field of bank supervision and regulation. S. Rep. No. 196, 86th Cong., 1st Sess. 21, 22-23 (1959); see, *e.g.*, 12 U.S.C. 1816 (federal deposit insurance); 12 U.S.C. 322 (membership in Federal Reserve System); 12 U.S.C. 1828(c) (bank mergers). Congress pro-

[7] The Board disfavors the formation of a bank holding company whose capital structures included more than 75 percent debt. See 12 C.F.R. 265.2(f)(22)(xi).

vided for administrative consideration of these banking factors in various contexts in an effort to promote, on a continuing basis, the soundness and good management of the banking system.[8] In particular, Congress adopted the Bank Holding Company Act "to permit [the Board], expert in banking matters, to explore and pass on the ramifications of a proposed

[8] The legislative history of the 1966 amendments to the Bank Holding Company Act demonstrate that Congress intended the Board to require holding companies to be financially sound and to enforce standards of soundness through the Board's authority to grant or deny approval for acquisition of a bank.

Prior to those amendments, Section 19 of the Banking Act of 1933, 48 Stat. 186, had required a bank holding company to obtain a voting permit from the Board as a prerequisite to voting a subsidiary bank's shares. In acting upon such application the Board was required to consider the financial condition of the bank holding company; and, upon obtaining a voting permit, the holding company became subject to examination by the Board and was required, *inter alia*, to maintain a prescribed reserve of readily marketable assets in order to provide for the replacement of capital and to cover losses in its subsidiary bank or banks.

Thus Congress explicitly had provided that a bank holding company should serve as a source of financial strength to its subsidiary bank. The 1966 amendments to the Bank Holding Company Act repealed the voting permit arrangement (80 Stat. 236), but only because it "serves no substantial purpose" in view of the authority granted to the Board by the Bank Holding Company Act to consider a holding company's financial resources. S. Rep. No. 1179, 89th Cong., 2d Sess. 12 (1966). In other words, Congress repealed the provisions in the Banking Act giving the Board authority to require holding companies affirmatively to enhance the financial resources of their subsidiary bank or banks only because, in Congress' view, it also had conferred that authority in the Bank Holding Company Act.

bank holding company arrangement." *Whitney National Bank* v. *New Orleans Bank*, 379 U.S. 411, 420. The legislative history of the Act shows that Congress expected bank holding companies to be a source of financial strength and stability for subsidiary banks. See, *e.g.*, S. Rep. No. 1095, 84th Cong., 1st Sess. 15 (1955).

Consistent with this congressional understanding, it has been the practice of the Board to require, as it did in this case, that "a bank holding company * * * provide a source of financial and managerial strength to its subsidiary bank(s)" (App. C, *infra*, p. 25a). See Heller, *Handbook of Federal Bank Holding Company Law* 129-138 (1976).[9] Accordingly, the Board repeatedly has denied applications for the formation of holding companies involving significant acquisition debt, where, as here,[10] the holding company could not demonstrate to the Board's satisfaction that it had the resources to service and retire the debt while at the same time fulfilling its responsibility to its subsidiary bank or banks.[11] The court of appeals should have deferred to the Board's longstanding interpretation of its authority under the Act. See, *e.g.*, *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 381; *Udall* v. *Tallman*, 380 U.S. 1, 16.[12] Instead, the court engrafted

[9] We are advised by the Board that in almost 400 instances it has granted approval of a holding company's acquisition of a bank upon a commitment by the holding company to increase the bank's capital (see, *e.g.*, *Denver U.S. Bancorporation, Inc.*, 56 Fed. Res. Bull. 291 (1970); *Michigan National Corporation*, 58 Fed. Res. Bull. 804 (1972)), and that since 1970 such commitments have added almost $2 billion to the capital of the nation's banks. See Hearings on Financial Institutions and the Nation's Economy (FINE)—Discussion Principles before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Currency and Housing, Part III, 94th Cong., 1st and 2d Sess. 2403 (1975-1976).

[10] In this case, the Board specifically found (and the court of appeals did not disagree) that respondent would not have "the financial flexibility necessary to meet its annual debt service requirements while maintaining adequate capital at [the] Bank" (App. C, *infra*, p. 25a).

[11] See, *e.g.*, *Clayton Bancshares Corporation*, 50 Fed. Res. Bull. 1261 (1964); *Mid-Continent Bancorporation*, 52 Fed. Res. Bull. 198 (1966); *Midwest Bancorporation, Inc.*, 56 Fed. Res. Bull. 948 (1970); *First Sebanco, Inc.*, 57 Fed. Res. Bull. 687 (1971); *The Grand Banks Corporation*, 57 Fed. Res. Bull. 1003 (1971); *BHCo., Inc.*, 60 Fed. Res. Bull. 123 (1974); *Citizens Bancorporation*, 61 Fed. Res. Bull. 805 (1975); *Starbuck Bancshares, Inc.*, 62 Fed. Res. Bull. 450 (1976).

[12] The court of appeals believed that questions of "bank soundness" were "reserved to the Comptroller of the Currency * * *" (App. A, *infra*, p. 9a). But the court simply misunderstood the allocation of regulatory responsibilities between the Board and the Comptroller. Each is required independently to consider the adequacy of a bank's capital structure. Compare 12 U.S.C. 26 and 27 with 12 U.S.C. 1842(c). See also 12 U.S.C. 78, 377, 461, 371b, 301, 222, 248(a), 601, 1844 (relating to regulation and supervision of national banks by the Board independently of the Comptroller of the Currency). All national banks are required to be members of the Federal Reserve System, 12 U.S.C. 222, and are subject to examination by the Board, 12 U.S.C. 248(a). Under the Bank Holding Company Act, 12 U.S.C. 1844, all subsidiary banks of a bank holding company are expressly subject to examination by the Board.

The Comptroller advises the Board with respect to applications for the formation of bank holding companies (Section 3(b) of the Act, 12 U.S.C. 1842(b)), but the Board is not

onto Section 3 of the Act a limitation upon the Board's authority that is inconsistent with the statutory scheme and that would seriously impair the Board's ability to prevent the formation of bank holding companies that would weaken the country's banking system.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

BARBARA ALLEN BABCOCK,
Assistant Attorney General.

RONALD R. GLANCZ,
MARK N. MUTTERPERL,
Attorneys.

DECEMBER 1977.

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required to follow the Comptroller's recommendation. Cf. *Whitney National Bank* v. *New Orleans Bank, supra,* 379 U.S. at 419.

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 76-1114

FIRST LINCOLNWOOD CORPORATION,
an Illinois Corporation, PETITIONER,

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT.

Petition for Review of an Order of the
Federal Reserve System

ARGUED IN BANC APRIL 19, 1977—
DECIDED JULY 13, 1977

Before FAIRCHILD, *Chief Judge*, SWYGERT, CUMMINGS, PELL, SPRECHER, BAUER and WOOD, *Circuit Judges.*

The court has reheard the case *in banc.* We will avoid unnecessary repetition of the facts set forth in the panel opinion.

The controlling statute is 12 U.S.C. § 1842(c):

> The Board shall not approve—
>
> (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
>
> (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country will be substantially to lessen competition, or to tend to create a monopoly, or which in any manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
>
> In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

The standards set forth in (1) and (2) relate to the question whether a proposed bank holding company structure will tend toward the lessening of competition, and it is clear from the legislative history that Congress' principal concern in regulating the acquisition of banks by bank holding companies is

with the anticompetitive potential. Thus in the 1956 Senate Report on the Act it was noted:

> . . . the principal problems in the bank holding company field arise from two circumstances: (1) The unrestricted ability of a bank holding company group to add to the number of its banking units, making possible the concentration of commercial bank facilities in a particular area under a single control and management; and
> (2) The combination under single control of both banking and non-banking enterprises, permitting departure from the principle that banking institutions should not engage in business wholly unrelated to banking.

See S. Rep. No. 1095, 84th Cong., 2d Sess., *reprinted in* [1956] U.S. Code Cong. & Ad. News 2482, 2483. The Senate Report accompanying the 1966 amendments to the Bank Holding Company Act also noted that the purpose of the Act was "to apply in the field of banking and bank holding companies the general purposes of the antitrust laws—to promote competition and to prevent monopoly, and the general purposes of the Glass-Steagall Act of 1933—to prevent unduly extensive connections between banking and other businesses." *See* S. Rep. No. 1179, 89th Cong., 2d Sess., *reprinted in* [1966] U.S. Code Cong. & Ad. News 2385, 2386. And the Senate Report accompanying the 1970 amendments continued to describe the Act as one regulating the "ability of . . . a [bank holding] company to obtain banking units, thereby concentrating the commercial bank facilities in a particular area under a single control" and "the

combination, again under a single control, of banking and non-banking enterprises." *See* S. Rep. No. 91-1484, 91st Cong., 2d Sess., *reprinted in* [1970] U.S. Code Cong. & Ad. News 5519, 5520.

We have no doubt that considerable deference must be accorded to a determination by the Board that a particular acquisition will have an anticompetitive tendency proscribed in (1) or (2). This court has upheld such decisions in cases where it was contended or even found that the considerations other than the anticompetitive factors militated in favor of the proposed acquisition. *First Wisconsin Bankshares Corp.* v. *Board of Governors*, 325 F.2d 946 (7th Cir. 1963); *Marine Corporation* v. *Board of Governors of Fed. Res. Sys.*, 325 F.2d 960 (7th Cir. 1963).

The question in this case, however, goes to the standard which governs the Board where no anticompetitive tendency is present, and the court must look only to the unnumbered paragraph at the end of the subsection. How broad is the Board's discretion to deny approval under those circumstances?

The Board's order denying approval is set out in an Appendix to the panel decision, 546 F.2d at 7. It is clear that "the proposed bank holding company formation is essentially a restructuring of the ownership interests of Bank," and "essentially a transfer of Bank's ownership from individuals to a corporation owned by the same individuals," and "would not eliminate any significant existing competition nor foreclose potential competition, increase the concentration of banking resources, or have any adverse

effect upon competition within the relevant banking market."

Thus the express standards for disapproval in paragraphs (1) and (2) were not fulfilled. The Board, however, apparently concludes that the unnumbered final sentence of § 1842(c) implies a "public interest" standard with respect to the financial and managerial resources and future prospects of the company or companies and the banks concerned and the convenience and needs of the community to be served. Because of the Board's concern over the $3.7 million indebtedness to which First Lincolnwood will be subject after acquiring the Bank's stock, and limitations upon First Lincolnwood's ability to resolve "any unforeseen problems that may arise at Bank," the Board deemed the proposal not in the public interest.

Because Congress required "consideration" of financial and managerial resources, future prospects, and convenience and needs of the community, it may well have intended that the Board disapprove an acquisition which would adversely affect the public interest vis-à-vis those considerations, even where no anticompetitive tendency is apparent.

As originally enacted, the general language regarding the consideration of soundness and community welfare was clearly not a mere modifier of the language dealing with anticompetitive effect. In 1956, § 1842(c) read as follows:

> In determining whether or not to approve any acquisition or merger or consolidation under this section, the Board shall take into consideration

> the following factors: (1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

See The Bank Holding Company Act of 1956, Pub. L. No. 511, Sec. 3(c), *reprinted in* [1956] U.S. Code Cong. &. Ad. News 169, 171. In 1966 the language was amended to its present form, *see* An Act to Amend the Bank Holding Company Act of 1956. Pub. L. No. 89-485, Sec. 7(c), *reprinted in* [1966] U.S. Code Cong. & Ad. News 265, 267 (codified at 12 U.S.C. § 1842(c)). Except for adding emphasis to the anticompetitive considerations and specifying the possibility that convenience and necessity may outweigh an anticompetitive tendency, the change to the present form of (c) does not appear to have significantly changed the substance. The reports indicate the change in language came in order to conform the standards of Board review in bank holding company cases to those used in bank merger cases. *See* S. Rep. No. 1179, 89th Cong., 2d Sess., *reprinted in* [1966] U.S. Code Cong. & Ad. News 2385, 2393. *See also* that portion of the Bank Merger Act, 12 U.S.C. § 1828(c)(5), which is identical to section 1842(c)

of the Bank Holding Company Act. From the legislative history of the Bank Merger Act, we learn that Congress wanted the Board to consider matters not strictly related to competitive effect, so that on those few occasions when a community would be greatly benefited by a bank holding company's operation, such benefits would not be denied simply because the Board, tied to a strict competitive analysis, felt itself obliged to deny approval of the holding company. *See* S. Rep. 1221, 89th Cong., 2d Sess., *reprinted in* [1966] U.S. Code Cong. & Ad. News 1860, 1863.

Thus we conclude that the Board is empowered to deny approval of a bank acquisition upon finding it not to be in the public interest for reasons other than an anticompetitive tendency.

What we think the Board has overlooked here is the logic that, in order to be grounds for disapproval, the condition or tendency deemed not to be in the public interest must be caused or enhanced by the proposed transaction. Here the concern of the Board is the amount of indebtedness to be assumed by the corporate owner of the Bank. Yet the individual present owners are obliged in the same amount. The indebtedness already exists, as well as the substantial capitalization of the Bank. The proposed transaction will not create nor increase the debt, nor increase any danger it poses to the soundness of the Bank. The only changes identified as resulting from the proposed transaction are a tax advantage which will make it possible to speed the reduction of the debt, and a proposed addition to Bank capital which will alleviate the

other concern. Both changes are favorable to the public interest, although they do not guarantee as much of an improvement as the Board would like.

The Board assumes the stance that the tax advantage of bank holding company status is a reward which it may withhold until the applicant's financial status fulfills the Board's standard of desirability. We do not find this power or breadth of discretion in the statute.

In considering the scope of the Board's discretion to deny bank holding company status pursuant to the last sentence of 12 U.S.C. § 1842(c), we have been mindful of the fact that as originally enacted, the Bank Holding Company Act empowered the Federal Reserve Board to regulate only those holding companies that exercised control over *two* or more banks. *See* Bank Holding Company Act of 1956, Pub. L. No. 511, Section 2(a), *reprinted in* [1956] U.S. Code Cong. & Ad.News 169.[1] In this light, we construe the language about considering financial soundness and community convenience to represent congressional thought that corporate control over two or more banks might have effects unrelated to competition, but nevertheless appropriate for consideration. Weakness of a bank to be acquired might be a reason in the public interest for allowing it to be owned by a strong hold-

[1] We note that when in 1966 the Bank Holding Company Act was amended to include section 1842(c) as we now know it, the power of the Federal Reserve Board over bank holding companies was still limited to those companies exercising control over two or more banks.

ing company, and to be balanced as a factor in favor of the acquisition and perhaps outweighing a concern over a possibility that competition might be decreased. Or under some circumstances its weakness might be deemed a reason for not burdening an existing holding company system. It seems reasonable then that Congress intended the Federal Reserve Board to withhold its approval where the formation or enlargement of the holding company structure would cause or tend to cause undesirable effects in terms of financial soundness and service. But, we do not find any indication that Congress meant the Board to go beyond this inquiry, and to consider questions of bank soundness and public need apart from how these would be altered by formation or enlargement of a bank holding company. These matters were already reserved to the Comptroller of the Currency in the case of national banks, or to various state agencies in the case of local banks.

Nothing in the history of the 1970 amendment to the Act which extended Board control to one-bank holding companies indicates any intent by Congress to alter this scheme. Indeed, it seems the primary reason for extending the coverage of the Act was the belief that the large growth in assets held by one-bank holding companies made it as necessary to remove the danger that a one-bank holding company "might misuse or abuse the resources of a bank it controls in order to gain an advantage in the operation of a nonbanking activity" as it originally had been to remove the danger that multi-bank holding

companies might so misuse resources. *See generally* S. Rep. No. 91-1084, 91st Cong., 2d Sess., *reprinted in* [1970] U.S. Code Cong. & Ad. News 5519, 5520-22. In short, it seems Congress' concern in extending the coverage of the Act to one-bank holding companies was more with bringing such companies under the limits of 12 U.S.C. § 1843[2] than with suggesting any broadening of Board discretion pursuant to section 1842(c). Accordingly, we conclude that the scope of Board discretion with respect to one-bank holding companies is identical to its discretion with respect to multi-bank holding companies: the Board can withhold approval of an acquisition whenever it is of the opinion that formation or enlargement of the holding company will result in effects harmful to competition, to the financial resources of the banks involved or to the needs and convenience of the communities to be served.

We reject then the Board's position that the general language of section 1842(c) either requires or authorizes it to withhold its approval where, as here, the soundness of operation of the bank involved is not adversely affected by the formation of a bank holding company.[3] The soundness of the First Na-

[2] 12 U.S.C. § 1843 provides, in pertinent part, that, (a) Except as otherwise provided in this chapter, no bank holding company shall—

> (1) After May 9, 1956, acquire direct or indirect ownership or control of any voting shares of any company which is not a bank. . . .

[3] As the Board conceded on oral argument to the original panel that heard this case, operation of the First National Bank of Lincolnwood through a one-bank holding company might in fact be financially sounder as a result of approximately $130,000 in annual tax savings that would be possible because of the opportunity to file a consolidated tax return.

tional Bank of Lincolnwood, except as adversely affected by the formation of a bank holding company, is a matter for the Comptroller of the Currency. Only he has the real power to protect the public from unsound national banking institutions, *i.e.*, by revoking their certificate to do banking. In contrast, a denial of one-bank holding company status to a corporation desiring to hold the stock of one bank on grounds that the bank involved has financial problems does little, if anything, to protect the public. The denial does not prevent the bank from continuing operation. It does not signal the public that it should be wary of dealing with the bank in question. In this case, the record indicates that the Comptroller of the Currency has considered the capitalization ratio of the First National Bank of Lincolnwood and, after the bank agreed to some changes in the proposal, recommended approval.[4]

The Board has not identified any undesirable effect or tendency which would be reasonably expected to be produced by the proposed acquisition. The low capitalization ratio and the debt of its stockholders already exist. The only identified effects of the ac-

[4] Pursuant to 12 U.S.C. § 1842(b), the Comptroller of the Currency must review and make recommendations whenever a bank holding company applicant would control a national bank.

quisition, the tax saving, and the infusion of capital, militate in favor of the acquisition. Thus the Board erred in denying approval. We do not order approval, only because there has been a delay of sufficient extent that relevant circumstances may have changed.[5]

The Board's denial of approval of the acquisition of the Bank and First Lincolnwood is set aside, and the cause is remanded to the Board for proceedings consistent with this opinion.

A true Copy:

Teste:

Clerk of the United States
Court of Appeals for
the Seventh Circuit

[5] The panel rejected contentions of First Lincolnwood relating to the ninety-day period for approval of a bank holding company, 12 U.S.C. § 1842(b), and the Board's forty-five day approval regulation, 12 C.F.R. 225.3(b) (1976). First Lincolnwood did not seek rehearing as to those contentions, and as to them, the decision of the panel controls.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

July 13, 1977

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

No. 76-1114

FIRST LINCOLNWOOD CORPORATION,
an Illinois Corporation, PETITIONER,

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE
SYSTEM, RESPONDENT.

Petition for Review of an Order of the
Federal Reserve System

Note: The Honorable Philip W. Tone did not participate in the consideration or decision of this appeal.

This cause came on to be heard on the transcript of the record from the Board of Governors of the Federal Reserve System and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the Board of Governors of the Federal Reserve System is SET ASIDE, and the cause is REMANDED to the Board for proceedings consistent with the opinion of this court filed this date.

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 76-1114

FIRST LINCOLNWOOD CORPORATION, PETITIONER,

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT.

Petition to Review an Order of the Board of Governors of the Federal Reserve System

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ARGUED OCTOBER 22, 1976—

DECIDED DECEMBER 7, 1976

Before CLARK, *Associate Justice* (Retired),* FAIRCHILD, *Chief Judge*, and HASTINGS, *Senior Circuit Judge*.

Petitioner seeks review of an order of respondent Board of Governors of the Federal Reserve System

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* The Honorable Tom C. Clark, Associate Justice, Supreme Court of the United States, Retired, is sitting by designation.

(Board or Federal Reserve Board), issued January 9, 1976, denying, on financial grounds, the application of First Lincolnwood to acquire the Bank.

The application was filed with the Federal Reserve Board pursuant to the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-1848, as amended (the Act), which makes it unlawful for a company to acquire control of a bank without first obtaining prior approval of the Board.

Section 1842(c) of the Act prescribes that in determining whether to approve an application, the Board is required to consider "the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served," as well as the competitive effects of the proposed transaction.

Section 1842(b) of the Act prescribes the following time limitation for Board consideration of an application to acquire control of a bank:

> In the event of the failure of the Board to act on any application for approval under this section within the ninety-one day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted.

Section 1848 of the Act provides that "[a]ny party aggrieved by an order of the Board" may petition for review in a United States Court of Appeals, and that "[t]he findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive."

THE ISSUES ON PETITION FOR REVIEW

1. Whether substantial evidence supports denial of petitioner's application to form a one-bank holding company on grounds of inadequate capitalization.
2. Whether the order of the Federal Reserve Board was issued within ninety-one days from the date of submission to the Board of the complete record on the application of the petitioner.
3. Whether the Federal Reserve Board complied with its own regulations governing applications for approval of the formation of a one-bank holding company.

BASIC FACTS

We first consider a statement of the basic facts and procedures underlying this petition for review.

On June 3, 1975, the Federal Reserve Bank of Chicago (Chicago Reserve Bank) accepted an application of First Lincolnwood to become a bank holding company through the acquisition of eighty per cent or more of the voting shares of the Bank. A voting trust controls the Bank through August 1, 1982.

A copy of the application was sent to the Comptroller of the Currency for his views and recommendations and to the Attorney General. The Attorney General did not respond. Notice of the application was also given to the several required federal and state agencies and was published in the Federal Register.

The Chicago Reserve Bank declined to exercise its

delegated authority to act on the application, but forwarded the application to the board for its consideration and action because of the current capital position of the bank and its unsatisfactory debt structure.

The Comptroller of the Currency first ruled adversely on the application but later reconsidered and voted favorably on it.

First Lincolnwood holding company is essentially a restructuring of the Bank's ownership whereby the ownership of the Bank will be shifted from individuals now owning somewhat over eighty per cent of the 144,375 shares of common stock authorized and outstanding, to a corporation owned by the same individuals, with no real change in control or management. The holding company intended to acquire the bank stock now held by the voting trust (eighty per cent would be required for tax purposes), and the holding company would also acquire by purchase $1,500,000 in additional bank stock within one year of completion of the transaction to further capitalize the Bank.

The real purpose of the acquisition is that the holding company would assume a debt of $3,700,000 owed by the Bank's principals to Central National Bank, secured by the Bank's stock, with an annual interest charge of $260,000. This would permit the filing of a consolidated tax return which, in turn, would allow this interest deduction to be taken against the earned income of the Bank, with an ultimate increase in

funds available to the Bank, as increased after tax earnings, of about $130,000.

The Bank had some early "adverse history" following the indictment of its then chairman and its former president in a case involving the manipulation of the stock on the American Stock Exchange. All parties now agree that the Bank's present management, headed by its chief executive officer, Mr. Harold Cohn, is outstanding and has converted the Bank to its now favorable condition.

Upon final consideration of the facts of record, the Federal Reserve Board denied the application. A copy of the Board's order is attached hereto as an Appendix to this opinion.

I

On the basis of our consideration of the record as a whole, together with the findings of the Board as set out in the attached Appendix, we have no difficulty in finding that there is substantial evidence to support the denial of petitioner's application.

The basic guidelines for consideration of this precise question are to be found in two thoroughly considered opinions authored by Judge Swygert of our court, *First Wisconsin Bankshares Corp.* v. *Board of Governors of the Federal Reserve System*, 7 Cir., 325 F.2d 946 (1963), and *Marine Corp.* v. *Board of Governors of the Federal Reserve System*, 7 Cir., 325 F.2d 960 (1963). We find these two cases to be dispositive of the first issue on this petition for review.

II

We find Judge Pell's opinion in *Tri-State Bancorp, Inc.* v. *Board of Governors of the Federal Reserve System*, 7 Cir., 524 F.2d 562 (1975), to be instructive on the date the ninety-one day period begins to run in order to determine whether the application for approval of a bank holding company shall be deemed to have been granted. We have earlier herein set out the provisions of 12 U.S.C. § 1842(b).

In *Tri-State*, the court regarded the principal issue as being the proper construction of the statutory phrase "complete record." After reviewing the legislative history of the Act and various tangential decisions, the court held "that the 91-day period of § 1842 (b) begins to run when the final material needed for the Fed's decision is received from the various interested sources outside the Fed, which ordinarily would be the applicant and governmental agencies other than the Fed. * * * [I]t is our view that the Congressional intent here was to define 'complete record' as meaning the facts upon which the agency would pass, not the internal documents relating to the process of that passing." 524 F.2d at 566.

Further, the court in *Tri-State* said: "The holding we have reached in this case, of course, does not mean that the submission of the complete record has occurred when the decisional process develops the need for further information which is thereupon requested. The completion of the record status is not reached until all factual data from external sources neces-

sary for the decision has been actually submitted to the Fed." 524 F.2d at 567.

We are in accord with the holding in *Tri-State* that the ninety-one day period does not start to run until the final material needed for the Board's decision is received from various interested sources outside the Board. In the instant case the Board's action on January 9, 1976, was well within ninety-one days of the last submission to it by First Lincolnwood on November 8, 1975, of the third quarter financial statements of the Bank. This was completely relevant and necessary as the basis for calculation of the Bank's invested asset ratios which support the Board's denial. First Lincolnwood acquiesced completely in furnishing the third quarter figures.

First Lincolnwood argues that the ninety-one day period ran from the date of acceptance of its application by the Reserve Bank of Chicago. This is unrealistic and in conflict with *Tri-State*. Likewise, we find no merit in First Lincolnwood's attempt to extend the holding in *Tri-State* by contending that a submission, in order to be deemed necessary to a Board decision, must be noted in the Board's order in order for the submission to mark the start of the ninety-one day period.

We have considered other contentions of First Lincolnwood on the ninety-one day time limitation period and are not persuaded by them.

We hold, therefore, that under the facts of this case, the Board acted within ninety-one days of the

submission of the complete record on the First Lincolnwood application.

III

Finally, First Lincolnwood contends that the Federal Reserve Board failed to comply with its own regulations for the approval of the formation of a one-bank holding corporation.

Under the Board's appropriate regulation concerning this issue, it is provided that:

> Any application for the Board's approval of the formation of a company that controls only one bank shall be deemed to be approved forty-five days after the company has been informed by its Reserve Bank that said application has been accepted, *unless the company is notified to the contrary within that time* or is granted approval at an earlier date. (Emphasis added.)

12 C.F.R. 225.3(b) (1976).

The record on review establishes that petitioner was notified on June 3, 1975 (seventeen days after the filing of its application), that the forty-five day period would not apply, and that its application would be forwarded to the Board for action, in lieu of action by the Chicago Reserve Bank under delegated authority.

By letter dated June 3, 1975, the Reserve Bank informed Mr. Harold Cohn, President of First Lincolnwood, that First Lincolnwood's application was accepted as of that date. The letter informed Mr. Cohn that the application would require action by the Federal Reserve Board because of the capital position of the Bank and, accordingly, that "[i]n view of the factors involved in this transaction, the 45-day period as provided in Section 225.3(b) of the Board of Governors' Regulation Y is hereby suspended."

This letter received by Mr. Cohn appears to be dispositive of this issue on review. The Board fully complied with its own regulation.

In sum, based on the foregoing, together with the order of the Board, as set out in the Appendix hereto, which we fully approve, the order of the Federal Reserve Board denying the application of First Lincolnwood is in all respects approved and affirmed.

AFFIRMED—REVIEW DENIED.

APPENDIX

FEDERAL RESERVE SYSTEM
FIRST LINCONWOOD CORP.

Order Denying Formation of Bank Holding Company

First Lincolnwood Corp., Lincolnwood, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act [12 U.S.C. § 1842 (a)(1)] of formation of a bank holding company through acquisition of 80 per cent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all Comments received, including those submitted by the Comptroller of the Currency, in light of the factors set forth in § 3(c) of the Act [12 U.S.C. § 1842(c)].

Applicant is a non-operating corporation organized under the laws of Illinois for the purpose of becoming a bank holding company through the acquisition of Bank. With deposits of $65.7 million, Bank holds approximately two-tenths of one per cent of the total deposits held by commercial banks in the relevant banking market (approximated by the Chicago area) and is the 67th largest of the market's 286 banks.[1] Inasmuch as this proposal represents essentially a

[1] All banking data are as of December 31, 1974, unless otherwise indicated.

transfer of Bank's ownership from individuals to a corporation owned by the same individuals, and Applicant has no present banking subsidiaries, the acquisition of Bank by Applicant would not eliminate any significant existing competition nor foreclose potential competition, increase the concentration of banking resources, or have any adverse effect upon competition within the relevant banking market. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The Board has indicated on previous occasions that a bank holding company should provide a source of financial and managerial strength to its subsidiary bank(s), and that the Board will examine closely the condition of the applicant in each case with this consideration in mind. In connection with this proposal, Applicant will incur acquisition debt of approximately $3.7 million, which debt Applicant proposes to service over a twelve-year period primarily through earnings of Bank. In the Board's view, the projected earnings of Applicant over the debt-retirement period appear to be somewhat optimistic in view of Bank's previous earnings record and, even if actually realized, would not provide Applicant with the financial flexibility necessary to meet its annual debt service requirements while maintaining adequate capital at Bank. Furthermore, although Applicant has stated that Bank plans to augment its capital accounts through the sale of $1.1 million in equity capital and $1.0 million debt capital within three to six months of approval of this application, the Board is concerned that the financial

requirements imposed upon Applicant as a result of the acquisition debt, and uncertainty as to the source of funds for Bank's proposed capital injections, could prevent Applicant from resolving any unforeseen problems that may arise at Bank. On the basis of the above banking factors, and other facts of record, the Board is of the view that it would not be in the public interest to approve the formation of a bank holding company with an initial debt structure that could result in the weakening of Bank's overall financial condition. Accordingly, the Board concludes that the considerations relating to the banking factors weigh against approval of the application.

As indicated above, the proposed bank holding company formation is essentially a restructuring of the ownership interests of Bank without any significant changes in Bank's operations or the services offered to customers of Bank. Consequently, considerations relating to the convenience and needs of the community to be served are consistent with, but do not lend weight toward, approval of the application.

On the basis of all of the circumstances concerning this application, the Board concludes that the banking considerations involved in the proposal present adverse factors bearing upon the financial conditions and future prospects of both Applicant and Bank. Such adverse factors are not outweighed by any procompetitive effects or by benefits to the convenience and needs of the relevant community. Accordingly, it is the Board's judgment that approval of the applica-

tion would not be in the public interest and that the application should be denied.

On the basis of the facts of record, the application is denied for the reasons summarized above.

By order of the Board of Governors,[2] effective[3] January 9, 1976.[4]

(Signed) Theodore E. Allison
THEODORE E. ALLISON
Secretary of the Board

[SEAL]

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[2] Voting for this action: Vice Chairman Mitchell and Governors Bucher, Holland, Wallich, Caldwell, and Jackson. Absent and not voting: Chairman Burns.

[3] Board action was taken while Governor Bucher was a Board member.

[4] Board action was taken before Governor Partee became a Board member.

FAIRCHILD, *Chief Judge*, dissenting in part. The facts in this case fail to show any greater risk to the financial structure of the bank in question or to the community which it serves if a bank holding company is formed than if present private ownership continues. Accordingly, I respectfully dissent from the court's resolution of the first issue in this case.

The Board's denial of appellant's application to form a holding company is based on its finding of an unfavorable ratio of debt to capital in the proposed holding company's financial structure. But, as the parties agree, this debt/capital ratio would by no means result from the creation of the proposed holding company. It is a present fact of the bank's existence that must be coped with whether the bank is privately or publicly owned.[1] On oral argument, counsel for the Board twice admitted that there would be practically no realistic difference in the financial operation of the bank whether it was owned by private individuals or allowed to operate through a bank holding company. Indeed, counsel went on to concede that operation under a bank holding company might be financially sounder in the instant case as a result of approxi-

[1] The present debt was incurred by the owners of the bank in order to buy out the shares of the former Chairman of the Board. He was under indictment in a case involving stock manipulation, and this, together with other factors, had caused severe financial losses to the bank. Present management is trying to recoup these losses and restore the bank to a financially sound position. This is clear from the Federal Reserve Board of Chicago Report on the application of the First Lincolnwood Corporation and is undisputed.

mately $130,000 in annual tax savings that would be possible because of the opportunity to file a consolidated tax return.

Nevertheless, the Board's position is that it is empowered to deny bank holding company status whenever it is unsatisfied with a bank's financial structure, regardless of whether the risks of that structure exist to the same, or even to a greater, degree under private ownership. The Board cites as the source of authority for its exercise of this power the last sentence of 12 U.S.C. § 1842(c) which provides that "in every case [in which application as a holding company is being made] the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served."

The critical issue as we see it, however, is whether this statute either empowers or requires the Board to deny the application unless persuaded that the bank's capability will be strengthened and its future prospects and servicing of the convenience and needs of the community positively improved by formation of a bank holding company (and that the improvement will be to a degree satisfactory to the Board), or whether the Board must be able to point to some increase of financial risk, some threat of injury to the community, which will ensue if a holding company is formed.

We believe the Board to have the burden. We draw this conclusion from our understanding of the Bank Holding Company Act. Its main thrust is not to avoid

all bank holding companies as financial structures risky in and of themselves, making an exception only when the applicant can promise some public benefit. Its thrust is to avoid those structures which will create anticompetitive risks so that the public interest demands their proscription.[2] Thus, the form of two numbered provisions, which are the heart of 12 U.S.C. § 1842(c), indicates that it is not the applicant who is required to show that the proposed holding company will promote competition, in order to obtain approval, but rather the Board that must find evidence of anti-competitive effect in order to deny.[3]

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[2] In its report the Senate Committee responsible for the Bank Holding Company Act stated that it was ". . . not the committee's contention that bank holding companies are evil of themselves. However, because of the importance of the banking system to the national economy, adequate safeguards should be provided against undue concentration of control of banking activities." S. Rep. No. 1095, 84th Cong., 2d Sess. *reprinted in* [1956] U.S. Code Cong. & Ad. News, 2d Sess., *see also* S. Rep. No. 91-1084, 91st Cong., 2d Sess. *reprinted in* [1970] U.S. Code Cong. & Ad. News 5519, 5520 (indicating the same Congressional concerns in amending the Act to include one-bank holding companies).

[3] 12 U.S.C. § 1842(c) provides:

> The Board shall not approve—
>
> (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
>
> (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country will be substantially to lessen competition, or to tend to create a monopoly, or which in any manner would be in restraint or trade, unless it finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
>
> In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

From this, we conclude that in those cases arising under the more general language of the last sentence of 12 U.S.C. § 1842(c), it is likewise necessary for the Board to support a denial of holding company status by pointing to some risk, either to the financial structure of the bank itself, or to the community which it serves, that would attend formation of a bank holding company and that would not be present under the current ownership. The Board has not done this.

Though our inclination ordinarily would be to defer to the Board's expertise in judging what risks attending the formation of a bank holding company warrant denial of that status,[4] when the Board has not indi-

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[4] The majority cites two cases as evidence of the deference this court has generally shown decisions of the Federal Reserve Board on applications for holding company status. *See First Wisconsin Bankshares Corp.* v. *Board of Governors of the Federal Reserve System*, 325 F.2d 946 (7th Cir. 1963); *Marine Corp.* v. *Board of Governors of the Federal Reserve System*, 325 F.2d 960 (1963). But in both these cases, the Board reported on anti-competitive effects that would result from the acquisition of the banks in question by holding companies. In the instant case, the Board concedes that no anti-competitive effects, or indeed, any adverse effects will be directly attributable to the formation of the proposed holding company.

cated its finding of any increase in risk either in its denial statement or in the brief filed with this court, and when it in fact has admitted on oral argument that no greater risk is posed by the formation of a holding company in this case than already exists under private ownership, there is, in my opinion, insufficient support for the denial. I would reverse.

A true Copy:

Teste:

Clerk of the United States
Court of Appeals for
the Seventh Circuit

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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-832

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,

Petitioner,

—v.—

FIRST LINCOLNWOOD CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED DECEMBER 9, 1977
CERTIORARI GRANTED, FEBRUARY 21, 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-832

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,

Petitioner,

—*v.*—

FIRST LINCOLNWOOD CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX TO APPENDIX

INDEX TO APPENDIX

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

Docket No. 76-1114

DATE	FILINGS—PROCEEDINGS
2/ 5/76	Filed O&3c of Petition for Review of an order of the Bd. of Governors of the Fed. Res. System.
2/ 5/76	Filed Clerk's copy of notice of service on counsel for respondent.
4/14/76	Filed O&3c of Appellant's Motion for Extension of time to file Brief—svc., aff.
4/14/76	Filed O&3c of Appellant's Motion for Transmission of Record—svc.
4/19/76	Entered Order Granting Motion; Respondent is directed to transmit the record on review, by 5/14/76.
4/19/76	Entered Order Extending time to file petitioner's brief to 6/25/76.
4/22/76	Filed O&3c of Respondent's Motion for Order Directing that the confidential section of the record on appeal and any briefs referring to or quoting the confidential section be withheld from public disclosure—svc.
4/28/76	Entered Order that the entire record (including briefs) be withheld from public disclosure and that said record and briefs may be viewed only by the parties to this appeal and their attorneys. This order is w/o prejudice to filing of a motion for leave to view the record. Any such motion shall designate those portions of the record that movant desires to view.

DATE	FILINGS—PROCEEDINGS
5/21/76	Filed O&3c of petitioner's motion for release of record—svc.
5/28/76	Entered order granting motion of 5/21/76.
6/11/76	Filed O&3c of petitioner's motion for ext. of time to file brief to 7/9/76—svc. aff.
6/15/76	Entered order granting motion of 6/11/76.
7/ 9/76	Filed 15c of petitioner's brief—svc.
8/ 5/76	Filed O&3c of respondent's motions for ext. of time to file brief to 9/10/76—svc. aff.
8/ 5/76	Entered order granting motion of 8/5/76.
9/13/76	Filed O&3c respondent's motion for leave to file typewritten brief-affidavit-service & 1c of brief tendered.
9/14/76	Entered order denying motion of 9/13/76 & respondent's brief due 9/20/76.
9/27/76	Filed 25c respondent's brief—service.
10/ 5/76	Filed 15c petitioner's reply brief, service.
10/ 5/76	Entered order setting appeal for oral argument on 10/22/76 9:30 am. Oral argument limited to 20 min. per side.
10/22/76	Heard and taken under advisement.
12/ 7/76	Filed opinion by Judge Hastings, Judge Fairchild dissenting in part, affirmed—review denied.
12/ 7/76	Entered final judgment order affirmed, & review of order denied.
12/16/76	Filed 25c petition for rehearing (en banc), service, distributed.
12/21/76	Filed O&1c affidavit of verified bill of costs—$140.80.

DATE	FILINGS—PROCEEDINGS
1/13/77	Sent notice to the respondent that answer to the petitioner's petition for rehearing be filed on or before January 24, 1977.
1/24/77	Filed O&3c appellee's consent motion for one-week extension of time in which to respond to rehearing petition. svc.
1/25/77	Entered order extending time until January 31, 1977, for appellee to file response to petition for rehearing and suggestion for rehearing in banc.
1/27/77	Filed 25c appellee's opposition to petition for rehearing, dist. svc.
4/ 3/77	Entered order that this appeal be reheard *in banc* on April 19, 1977 at 2:00 PM, oral argument to be limited to 15 min. per side.
4/19/77	Heard and taken under advisement.
7/13/77	Filed opinion by Judge Fairchild.
7/14/77	Entered final order per C.R. 35 that printed opinion is corrected by adding asterisk following Judge Wood's name at line 2 on page 1, and the following footnote: "*The Honorable Philip W. Tone did not participate in the consideration or decision of this appeal."
7/13/77	Entered final judgment order: SET ASIDE AND REMANDED.
7/20/77	Filed O&3c respondent's motion to stay issuance of mandate, svc.
7/22/77	Entered order granting respondent's motion to stay issuance of mandate to August 19, 1977.

DATE	FILINGS—PROCEEDINGS
8/15/77	Filed O&3c respondent's motion to further stay issuance of mandate, svc.
8/18/77	Entered order granting respondent's motion to further stay issuance of mandate to Sept. 19, 1977.
9/12/77	Filed O&3c appellee's motion to further stay issuance of mandate, svc.
9/15/77	Entered order granting respondent's motion to further stay issuance of mandate, until Oct. 10, 1977.
10/11/77	Filed O&3c respondent's motion to further stay issuance of mandate, svc.
10/11/77	Filed copy of letter to respondent's from Supreme Court extending time in which to file a petition for wirt of cert. until 11/10/77.
10/17/77	Entered order that enforcement of this court's final judgment is STAYED until Nov. 10, 1977, per Rule 41(b).
11/ 7/77	Filed O&3c respondent's motion to further stay issuance of mandate, svc.
11/ 7/77	Filed copy of letter from Supreme Court that an extension of time has been granted for filing a petition for cert.
11/11/77	Entered order granting respondent's motion to further stay issuance of mandate until Dec. 10, 1977, per Rule 41(b), F.R.A.P.
12/16/77	Filed notice of filing petition for cert. on Dec. 9, 1977; Supreme Court No. 77-832.
3/ 7/78	Filed order from Supreme Court dated 2/21/78, granting petition for cert.

APPLICATION

To the Board of Governors of the
Federal Reserve System

by

FIRST LINCOLNWOOD CORPORATION—6-3-75
6401 N. Lincoln Avenue, Lincolnwood, Illinois 60645

FOR PRIOR APPROVAL OF ACTION TO BECOME A BANK HOLDING COMPANY PURSUANT TO SECTION 3(a)(1) OF THE BANK HOLDING CO. ACT OF 1956, AS AMENDED

First Lincolnwood Corp. (hereinafter referred to as Applicant), a Corporation organized under the laws of the State of Illinois and having its principal place of business at 6401 N. Lincoln Ave., Lincolnwood, Ill., hereby applies to the Board of Governors of the Federal Reserve System (hereinafter referred to as Board), pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956, (hereinafter referred to as Act) as amended, for prior approval by the Board of action proposed to be taken by Applicant which would result in its becoming a bank holding company with respect to the following bank(s):

Corporate Title and Location of Bank	Number or percentage of Bank's voting shares: Now owned, controlled, or held with power to vote	Number or percentage of Bank's voting shares: Proposed to be acquired
First National Bank of Lincolnwood Lincolnwood, Illinois	None	80% or more

(hereinafter referred to as BANK(S).

The following Exhibits prepared in accordance with the General Information and Instructions on pages 3 and 4 are submitted as part of this application:

EXHIBIT A—Resolution of Board of Directors

EXHIBIT B—Description of Applicant and Proposed Transaction

EXHIBIT C—Financial and Managerial Information

EXHIBIT D—Convenience and Needs

EXHIBIT E—Competition Among BANKS

EXHIBIT F—Nonbanking Activities—Competition

EXHIBIT G—Nonbanking Activities—Other Aspects

Applicant represents that the information contained in this application is true and complete to the best of its knowledge and belief.

Executed this 17th day of May, 1975.

First Lincolnwood Corp.
(Name of Applicant)

by /s/ Harold Cohn
(Authorized Officer)

ATTEST:

/s/ Robert J. O'Rourke
(Secretary)

EXHIBIT A—RESOLUTION OF BOARD OF DIRECTORS

RESOLUTION

Applicant's Board of Directors, or other appropriate governing body, shall authorize the execution and delivery of this application to the Board by a resolution substantially in the form as that which follows:

RESOLVED, that Harold Cohn the President, and Joseph E. Franks the Vice President, of First Lincolnwood Corp., (hereinafter referred to as Applicant), or either of them, be and they hereby are authorized and empowered for and in the name and on behalf of Applicant to execute and deliver to the Board of Governors of the Federal Reserve System, pursuant to section 3 (a) (1) of the Bank Holding Company Act of 1956, as amended, an application for prior approval by the Board of action to be taken by Applicant which would result in its becoming a bank holding company.

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of First Lincolnwood Corp. at a meeting duly called and held at Lincolnwood, Illinois on the 17th day of May, 1975, at which meeting a quorum was present and voted.

/s/ Robert J. O'Rourke
(Secretary)

[SEAL]

EXHIBIT B—DESCRIPTION OF APPLICANT AND PROPOSED TRANSACTION

1.) A pro forma organization chart is attached indicating ownership control by the First Lincolnwood Corp. of the First National Bank of Lincolnwood, Lincolnwood, Illinois and it's wholly owned subsidiaries, Lincolnwood National Safe Deposit Co. and First Travel Tours, Inc. First Travel Tours, Inc. was incorporated in August 1969 and has been active since that date. A comparative statement of First Travel Tours, Inc. is attached.

2.) (a) The Bank has a total of 144,375 shares of common stock, authorized and outstanding, having a par value of $10.00 per share.

(b) The First Lincolnwood Corp. will assume a total debt of *$3,280,000.00 by means of the proposed acquisition of 80% or more of the outstanding common stock of the First National Bank of Lincolnwood. This total indebtedness represents an average price of $26.40 per share of Bank stock. The original average price per share paid for this stock by the members of the "Voting Trust Agreement dtd 2/20/73" is $35.25. The principal lender is the Central National Bank of Chicago which is the principal correspondent Bank of the First National Bank of Lincolnwood. The terms of this debt call for a 12 year amortization of the principal balance with interest at the current prime rate as set by the loaning Bank. There is no formal agreement to maintain compensating balances at the Central National Bank. Balances maintained at the Central National Bank by the First National Bank of Lincolnwood are expected to be in accordance with services performed in the normal course of correspondent banking. It is presently anticipated that

* This amount represents a total indebtedness of $3,697,000.00 which will be reduced immediately after approval of the proposed acquisition to bring the ratio of debt to cost below 75%.

balances maintained at the principal correspondent bank should average between $600,000.00 and $800,000.00. The bulk of this balance is maintained to offset the cost of customer security transactions and safekeeping costs for customer and bank owned securities. The charges for customer security transactions are charged to analysis at the correspondent bank rather than a direct service charge. This enables the bank to charge their customer in deference to their account relationship while simplifying bookkeeping procedures. Other correspondent banking services that require balances to offset costs are as follows:

Reserve Requirements	Commercial Letter of Credit
Coupons Cashed	Collections
Account Debits	Foreign Drafts
Account Credits	Documentary Collections
Currency Deposits	Bond Redemptions
Money transfers	Commercial Paper Purchases
Rolled Coin Orders	Commercial Paper Collections

An amortization schedule indicating the retirement of the above mentioned debt is included in the "Confidential" section of this application.

(c) The Holding Company anticipates the acquisition of 80% or more of the common stock of the bank. This represents approximately 124,244 shares. The acquisition is to be by an exchange of one (1) share of Holding Company common stock for one (1) share of common stock of the Bank.

(d)

(i) The Applicant does not presently hold any shares of the Bank stock.

(ii) The Applicant does not have any subsidiaries that hold shares of the Bank stock.

(iii) The following list represents shareholders, officers and employees of the Applicant that hold shares of stock in the Bank:

Name and Position	No. of Bank Shares held
Dr. Fred Weitz, Chairman	100*
Harold Cohn, Pres. & Director	515*
Donald B. Kaufman, Director	110*
Harry Zaidenberg, Director	100*
Joseph E. Franks, Vice President	259

* These shares represent those held individually, by the above indicated persons, and does not include those shares held by them under the Voting Trust Agreement dated Feb. 20, 1973, a copy of which has been enclosed.

(e) The Applicant does not intend to make a formal written offer to Bank shareholders since it is anticipated that the only Bank shares to be acquired are those held by the Directorship and the certain "Voting Trust" in which the Directors of the applicant and the Bank participate.

(f) The most recent market price of the Bank's shares is $37.50, bid and asked. This price represents the fair market value based on the recent offer by members of the "Voting Trust" for 40,732 shares of Bank stock that were traded between Sept. 15 and October 15, 1974. There is no established price for the Applicants shares at this time. The Bank's shares are non-listed and are usually traded between private parties and periodically through a securities Broker.

(g) Since the Applicant and the Bank share some common Directorship the formation of the Holding Company for the purpose of acquiring the Bank stock is by mutual agreement of all of the parties involved. There was no brokers or finders fee to be paid with regard to the proposed transaction. Further details, as to the reason for the transaction are actached as "Confidential" material.

(h) No consideration, monetary or otherwise, has been paid, given or offered or will be paid, given or offered to any shareholder, director or officer in connection with the consummation of the proposed transaction. There are no covenants not to compete given

or offered to or asked of any shareholder, director or officer in connection with the consummation of the proposed transaction.

3.) There are no shares of any bank held in trust by a trustee of a pension or profit-sharing plan established for the benefit of the shareholders or employees of the Bank, Applicant or any of its proposed subsidiaries as a class.

4.) Neither the Applicant, nor any of its proposed subsidiaries or affiliates, is a lender with respect to any loan collateralled by shares of the Bank.

5.) The First National Bank of Lincolnwood does not have any loans outstanding collateralled by bank stock which represents more than five (5) per cent of that bank.

6.) The First National Bank of Lincolnwood has been in existence since 1955 and is therefore not a new operating bank.

EXHIBIT C—FINANCIAL AND MANAGERIAL INFORMATION

1.) A pro forma balance sheet of First Lincolnwood Corp. is attached and thereby made a part of this application.

2.) A pro forma statement of estimated earnings for the First Lincolnwood Corp. for the first full year of operation after consummation of the proposed acquisition is attached in the "Confidential" section and thereby made a part of this application.

3.) The Applicant proposes to issue $1,500,000 in 15 year Capital Notes of the First Lincolnwood Corp. at a rate commensurate with the current Bond rates in effect at the time of offering. The proceeds of these notes would be used solely to increase the equity capital of the Bank. It is anticipated that the offering of these Notes would be done locally such as to shareholders of the Applicant and the Bank and to depositors of the Bank. The proposed offering of Capital Notes would take place within one year after consummation of the proposed acquisition. The Bank currently handles approximately $11,500,000.00 in customer security transactions. These

securities are held in safekeeping with Correspondent Banks for customer accounts. The average term of these securities if 60 to 90 days and involves approximately 450 separate accounts. Since the rate of interest to be offered on the Capital Notes of the Applicant is to be competitive with the current market rates it is felt that these Notes will be well received in the area.

4.) The following financial reports of the First National Bank of Lincolnwood, as filed with the Federal Supervisory authorities, are attached and made a part hereof:

(a) Consolidated Report of Condition

December 31, 1965	December 31, 1970
December 31, 1966	December 31, 1971
December 31, 1967	December 31, 1972
December 31, 1968	December 31, 1973
December 31, 1969	December 31, 1974

(b) Consolidated Report of Income and Dividends

Calendar Year ended	
1965	1970
1966	1971
1967	1972
1968	1973
1969	1974

5.) A plan to raise equity capital for the benefit of the capital structure of the Bank is planned through the issuance of $1,500,000.00 in 15 year Capital Notes of the First Lincolnwood Corp. as fully described in #3 exhibit C.

6.) A copy of the 1974 Annual Report to the shareholders of the First National Bank of Lincolnwood, including the Bank's wholly owned subsidiaries, Lincolnwood National Safe Deposit Company and First Travel Tours, Inc., is attached and made a part hereof.

7.) The names and addresses of each shareholder owning directly or indirectly 5 percent or more of outstanding voting stock of the First National Bank of Lincolnwood is as follows:

Name and Address	Number of Shares owned
Harry Zaidenberg, Donald Kaufman, Joseph Stelzer and George Collins, Trustees under Voting Trust Agreement dated February 20, 1973. c/o First National Bank of Lincolnwood, 6401 N. Lincoln Avenue, Lincolnwood, Illinois 60645	124,244

41,193 shares of the First National Bank of Lincolnwood were deposited to the "Voting Trust" during the 12 months prior to the Holding Company application.

40,732 shares were acquired by Messrs. Weitz, Zaidenberg, Cohn, and Kaufman between September 15, 1974 and October 15, 1974. These shares were deposited in the "Voting Trust" as follows:

9/27/74	29,999 shares
10/18/74	10,029 shares
10/31/74	704 shares

The price paid for these shares was $37.50 per share.

461 shares were deposited to the "Voting Trust" by Mr. Zaidenberg individually as follows:

Date Acquired	No. of Shares	Date Deposited
4/18/74	120	7/16/74
4/30/74	264	7/16/74
11/ 7/74	77	11/ 7/74

The price paid for these shares was $25.91 per share.

8.) A list of Directors and Officers of First Lincolnwood Corp. exercising similar functions with the First National Bank of Lincolnwood is listed below. Included in this list are the remaining members of the "Voting Trust Agreement dated 2/20/73".

Name and Address	No. of shares held with (a) Applicant and (b) Bank	Position with (a) Applicant (b) Bank (c) Other	Positions with other Financial Institutions
Harold Cohn Skokie, Illinois	(a) 17,900** (b) 515*	(a) Dir. & Pres. (b) Vice Ch. & Pres. (c) None	None
George Collins Chicago, Illinois	(a) None (b) 100	(a) None (b) Director (c) Att'y	Director Merchants & Manufacturer Bk, Melrose
Joseph E. Franks Elk Grove Village, Ill.	(a) None (b) 259	(a) Vice Pres. (b) Exec. V.P. & Dir. (c) None	None
Donald Kaufman North Barrington, Ill.	(a) 16,299** (b) 110*	(a) Director (b) None (c) Real Estate Developer	Director River Grove State Bank
Ralph Kuhlman Elk Grove, Ill.	(a) None (b) None	(a) Treasurer (b) V.P. & Comptroller (c) None	None
Robert J. O'Rourke Roselle, Ill.	(a) None (b) None	(a) Sec'y (b) V.P. & Cashier (c) None	None
Clarence Permut Chicago, Ill.	(a) 3,000** (b) 100*	(a) None (b) Director (c) Pres. Erie Clothing Co.	None
Mark Rubert Lincolnwood, Ill.	(a) 4,147** (b) 110*	(a) None (b) Director (c) C.P.A.	None
Joseph P. Stelzer Chicago, Ill.	(a) 2,890** (b) 110*	(a) None (b) Director (c) Retired	None
Dr. Fred Weitz Lincolnwood, Ill.	(a) 57,459** (b) 100*	(a) Chairman (b) Chairman (c) Dentist	None
Nels E. Werner Chicago, Illinois	(a) 1,215** (b) 100*	(a) None (b) Director (c) Engineer	Chairman, River Grove State Bank

Name and Address	No. of shares held with (a) Applicant and (b) Bank	Position with (a) Applicant (b) Bank (c) Other	Positions with other Financial Institutions
Harry Zaidenberg Chicago, Illinois	(a) 21,334** (b) 100*	(a) Director (b) Director (c) Att'y	Director Palwaukee State Bank

None of the above named individuals are involved in any agreement similar to that which is described in this application.

* These shares represent those held individually by the above indicated persons, and does not include those shares held by them under the "Voting Trust Agreement dtd 2/20/73".

** These shares represent those which will be held by these individuals by means of exchange for shares of the Bank now held in the Voting Trust.

80,360 shares of the common stock of the First National Bank of Lincolnwood were deposited to the "Voting Trust" on Feb. 20, 1973. Since that date, 43,884 additional shares have been acquired by members of the "Voting Trust Agreement dated 2/20/73. These additional shares have been deposited to the "Voting Trust" by its members for the sole purpose of assuring continuity of responsible Bank Management.

9.) There are no changes contemplated to be made in the membership of the Board of Directors or principal officers of either the Applicant or the Bank.

EXHIBIT D—CONVENIENCE AND NEEDS

1.) There are no expected changes in service charges or in demand deposit accounts. The Bank maintains service charge schedules that are competitive with area banks as defined in regulation 7.8000 of the interpretive rulings of the Comptroller of Currency.

2.) The Bank pays interest rates on Time and Savings deposits to the maximum rate allowed by the Board of Governors of the Federal Reserve System, as defined in regulation Q. It is not anticipated that there will be any changes in the interest rates paid on time and savings deposits except those that may be prescribed from

time to time, the the Board of Governors of the Federal Reserve System.

3.) The rates of interest charged by the Bank on loans is competitive with other area banks and is primarily geared to current market rates. There are no expected changes with regards to maximum maturities or other loan terms.

4.) Due to the infusion of $1,500,000.00 in Equity Capital, the Bank's legal lending limit will be increased thereby increasing the total amount which could be extended to any one borrower. If there is no increase in loan demand, the funds will be invested in the Fed Funds market or Security Investment Portfolio. There are no other expected changes in the composition of the Bank's loan and investment portfolio.

5.) The Bank currently has plans under consideration to remodel the second floor of the Bank Building to accommodate the Commercial Loan Dept., Installment Loan Dept., Auditing Dept., Central Files, and the anticipated formation of a Trust Dept. Although the Bank has commissioned the Bank Building Corp. to project certain requirements for future expansion, it is not anticipated that any remodeling costs in the near future will exceed $150,000.00.

6.) The Bank maintains business hours that are competitive with area banks. The main Bank building is open for business during the following hours:

Mon., Tues., Thurs., & Fri.:	9:00 A.M. to 3:00 P.M.
Thurs. Evening:	6:00 P.M. to 8:00 P.M.
Saturday	9:00 A.M. to 1:00 P.M.
Drive In Windows:	
Mon., Tues., & Fri.:	8:00 A.M. to 4:00 P.M.
Thursday:	8:00 A.M. to 8:00 P.M.
Wed. and Saturday:	8:00 A.M. to 1:00 P.M.

The Bank maintains a Drive In/Walk In Facility at a location within 1500 feet of its principal Bank building and maintains the following hours at this location to better serve the community:

Mon., Tues., Thurs., & Fri.:	7:30 A.M. to 8:00 P.M.
Wed.:	7:30 A.M. to 5:00 P.M.
Sat.:	7:30 A.M. to 1:00 P.M.

7.) At a meeting of the Board of Directors of the First National Bank of Lincolnwood held on November 21, 1974, a resolution was passed authorizing the Bank's officers to submit an application to the office of the Comptroller of the Currency for the formation of a Trust Dept. This application is near completion and will be submitted in the near future.

8.) In the event that the application to establish a Trust Dept. is approved this added service will benefit the Bank's customers and local residents in the establishment of "Land Trusts" without the inconvenience of having to seek this service outside of the Bank's geographic area.

EXHIBIT E—COMPETITION AMONG BANKS

In accordance with the instructions this exhibit need not be completed since the proposal involves only one Bank.

EXHIBIT F—NONBANKING ACTIVITIES—COMPETITION

In accordance with the instructions this exhibit need not be completed since the Applicant does not anticipate, at this time, engaging in any nonbanking activity that requires separate Board approval.

EXHIBIT G—NONBANKING ACTIVITIES—OTHER ASPECTS

In accordance with the instructions this exhibit need not be completed since the Applicant does not anticipate, at this time, engaging in any nonbanking activity that requires separate Board approval.

FEDERAL RESERVE BANK OF CHICAGO
230 South La Salle Street
Chicago, Illinois 60690
(312) HA 7-2320

June 3, 1975

Mr. Harold Cohn, President
First Lincolnwood Corp.
6401 North Lincoln Avenue
Lincolnwood, Illinois 60645

Dear Mr. Cohn:

This is to acknowledge receipt by this Reserve Bank of the application by First Lincolnwood Corp., Lincolnwood, Illinois, for prior approval of the Board of Governors of the Federal Reserve System, pursuant to Section 3 of the Bank Holding Company Act of 1956, as amended, to become a bank holding company through the acquisition of 80 percent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois.

Your application has been reviewed preliminarily. If further review by our staff or the Board's staff indicates that additional information is necessary, you will be informed.

Information submitted as confidential has been accorded such treatment and no other information contained in the application is deemed to warrant such treatment.

A copy of the application has been forwarded to the Comptroller of the Currency for his views and recommendation, as required by law. A copy has also been sent to the Department of Justice, and notice of receipt of the application will be transmitted to the Federal Register for publication. In addition, the Illinois Commissioner of Banks and Trust Companies and the Federal Deposit Insurance Corporation have been notified of receipt of the application.

The application is not being processed under delegated authority because of the current capital position of the bank involved, which appears unsatisfactory despite a proposed capital injection; and because it is questionable

whether, in view of the amount of acquisition debt to be incurred by Applicant, this capital position could be maintained or improved during the debt retirement period.

In view of the factors involved in this transaction, the 45-day period as provided for in Section 225.3(b) of the Board of Governors' Regulation Y is hereby suspended.

Should any unusual problems develop that would appear likely to delay processing of the application, you will be informed by this Bank or by the Board.

Very truly yours,

/s/ Franklin D. Dreyer
FRANKLIN D. DREYER
Vice President

lb
cc—Board of Governors

FEDERAL RESERVE BANK OF CHICAGO
230 South La Salle Street
Chicago, Illinois 60690
(312) HA 7-2320

August 6, 1975

Board of Governors of the
Federal Reserve System
Washington, D. C. 20551

Gentlemen:

First Lincolnwood Corp., Lincolnwood, Illinois, has submitted an application to the Board of Governors for prior approval of action to become a bank holding company through the acquisition of 80 percent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois.

The factors involved in this proposed transaction, although marginal, lend weight towards approval in view of the proposed capital injection and the substantial improvements management has been able to effect in Bank. Bank is financially sound and future prospects appear favorable; consequently, both Supervision and Regulation and Research departments recommend approval of the application.

It is the recommendation of this Reserve Bank that the application by First Lincolnwood Corp. be approved by the Board of Governors of the Federal Reserve System.

Very truly yours,

/s/ Harry S. Shultz
HARRY S. SCHULTZ
Senior Vice President

FEDERAL RESERVE BANK OF CHICAGO
230 South La Salle Street
Chicago, Illinois 60690
(312) HA 7-2320

File Date 8/6/75

AIR MAIL

Clearing Unit
Division of Banking Supervision
and Regulation
Board of Governors of the
Federal Reserve System
Washington, D. C. 20551

Gentlemen:

There are enclosed the original and a copy of this Reserve Bank's memorandum prepared in connection with the application by First Lincolnwood Corp., Lincolnwood, Illinois, for prior approval of action to become a bank holding company through the acquisition of 80 percent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois.

Very truly yours,

/s/ Franklin D. Dreyer
FRANKLIN D. DREYER
Vice President

MEMORANDUM

FEDERAL RESERVE BANK OF CHICAGO

DATE: August 6, 1975

TO: Board of Governors of the
Federal Reserve System

FROM: Federal Reserve Bank of Chicago

SUBJECT: Application by First Lincolnwood Corp., Lincolnwood, Illinois ("Applicant"), for prior approval of action to become a bank holding company through the acquisition of 80 percent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois ("Bank").

TABLE OF CONTENTS

SUMMARY OF ISSUES

The proposed transaction—First Lincolnwood Corp., Lincolnwood, Illinois ("Applicant"), has submitted an application to the Board of Governors for prior approval of action to become a bank holding company through the acquisition of 80 percent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois ("Bank").

Financial and managerial considerations—Bank has a sound asset structure and satisfactory management; however, its capital sufficiency is less than adequate. Although the proposed $1.5 million equity infusion by Applicant would initially raise capital to a marginally adequate level, Applicant's high degree of leverage (88 percent of first year assets) and associated debt retirement program, may strain future capital adequacy in view of Bank's recently dramatic deposit growth. Although Bank's earnings have been historically plagued by legal expenses and loan charge-offs generally attributable to directors and their interests no longer associated with Bank, current earnings prospects are favorable. Despite the probability that capital ratios may be below Board guidelines during the debt retirement period, it is noteworthy that Bank's favorable condition is directly attributable to present management; Bank had an equivalent rating of ———— in 1967, in comparison to the current ———— rating. Bank's prospects would be severely reduced, particularly capital enhancement since the proposed capital injection represents a 41 percent increase in adjusted capital, if this application were denied. Bank's ownership is apparently doing everything possible to maintain Bank in a satisfactory condition, and the holding company structure would present substantial cash flow (tax benefits from consolidating earnings), which would reduce dividend requirements for debt amortization, thus improving Bank's prospects for additional capital enhancement through earnings retention.

Competition—Applicant was recently organized for the purpose of becoming a bank holding company with respect to Bank, and has engaged in no business activities as yet. Since the proposal is essentially a restructuring of Bank's ownership whereby the ownership of Bank will be shifted from individuals to a corporation owned by the same individuals, consummation of the proposal would eliminate neither existing nor potential competition, nor would it increase the concentration of banking resources in any relevant market. As such, competitive considerations are viewed as being consistent with approval.

Convenience and needs considerations—Area banking needs are believed adequately served at present. Applicant has proposed no significant changes in Bank's services or operations as a result of the instant reorganization. However, limited public benefits should arise due to the infusion of additional equity capital into Bank and from financially related activities and services that Applicant could provide as a result of the holding company form of organization. On balance, convenience and needs considerations are viewed as being consistent with approval.

RECOMMENDATIONS

Supervision and Regulation Department	Approval
Research Department	Approval
Reserve Bank	Approval

Supervision and Regulation Department	Research Department
/s/ [Illegible]	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]

ADDITIONAL INFORMATION

We have reviewed the information contained in the Comptroller of the Currency's letter dated July 24, 1975, and despite the adverse recommendation contained therein, we continue to recommend approval of the application. As indicated in the Comptroller's letter (all references made in the memorandum concerning the Comptroller's office refer to and are the result of personal discussions with various personnel from the Regional Administrator's office in Chicago), Applicant's principals through a voting trust have had a favorable impact on improving Bank's financial condition. Moreover, the Comptroller apparently supports our conclusion that Bank's earnings have improved, and that the level of future earnings (as projected for debt retirement and capital enhancement), needed to amortize Applicant's debt can be reasonably attained. It appears that the Comptroller's only objection to the proposal is that the debt incurred (both acquisition and from the proposed injection of capital), will be solely held by the proposed holding company, thus relieving individual responsibility for Bank's ownership and capitalization. As indicated by submitted personal statements, if the principals had additional debt capacity perhaps other alternatives, with the exception of dilution of ownership, would be available, however, this is not the case. The current debt position of the principals is directly tied to acquisition of additional control of Bank, and at the same time exercising this control to improve its daily operation and general condition. We believe this control is fundamental to the current well being of Bank, thus, it seems inappropriate to penalize the principals for their accomplishment using debt, by denying their plans for reorganization when their past actions generally support approval of the proposal. The holding company structure will enhance Bank's prospects for capital retention. Moreover, Bank's improving and conservative asset condition and its managerial competence outweigh low capital ratios which are expected to improve in time.

THE PROPOSAL

Bank's shares and proposed acquisition—Bank has 144,375 shares of common stock outstanding, having a par value of $10 per share. Applicant proposes to acquire 124,244 shares of Bank's stock (86.07 percent), now owned by a voting trust [1] comprised of and for the benefit of Messrs. Harry Zaidenberg, Donald B. Kaufman, Harold Cohn, and Fred Weitz, in exchange for 124,244 shares of Applicant's common stock, having a par value of $1 per share. Applicant will also assume a total of $3,697,000 in debt, payable to Central National Bank in Chicago, Illinois, at the prime rate which is to be amortized over a twelve-year period. In an apparent effort to improve Bank's capital position, Applicant has committed to sell within one year of consummation of the proposal, $1.5 million in 15-year capital notes, the proceeds of which would be used to purchase additional shares of Bank's capital stock.

Value of participants' shares and premium—Applicant was recently organized with a minimum of capital, and there is no established market for its shares. Bank's shares are unlisted and are usually traded between private parties and periodically through a local securities broker. The most recent market price of Bank's shares was $37.50, bid and asked for 40,732 shares of Bank's stock that were traded between September 15 and October 15, 1974. As of December 31, 1974, Bank's book value, including equity capital and reserve for loan losses, was $26.40 per share. The proposal is essentially a reorganization of ownership with no realizable premium or discount involved. Bank's shareholders intend to receive Applicant's stock in exchange for Bank shares plus the remaining acquisition debt originally incurred in acquiring these shares. Currently, acquisition debt on the proposed shares exceeds their respective year-end book value by $416,958 or $3.36 per share.

[1] Voting trust agreement, dated February 20, 1973 and expiring August 1, 1982, is not considered to be a company under the Bank Holding Company Act of 1956, as amended.

Consideration or compensation—Applicant states none has been given, paid or offered in connection with consummation of the proposed transaction. Neither Applicant nor Bank has entered into or proposed to enter into any anticompetitive agreement with any director, officer, or shareholder of Bank.

FINANCIAL AND MANAGERIAL CONSIDERATION

Bank

(1) *Financial History and Asset Condition*

History—Bank was organized as a National Bank on March 11, 1955, and was admitted to membership in the Federal Reserve System on October 10, 1955, under the chartered name of Consumers National Bank of Chicago, Chicago, Illinois. In 1962 the Bank moved to Lincolnwood, Illinois, and changed its name to The First National Bank of Lincolnwood, Lincolnwood, Illinois. The last examination of Bank was conducted by examiners for the Comptroller of the Currency on March 31, 1975.

Asset condition—The examination report revealed a total of $674,686 in classified assets ($447,685 substandard, $162,500 doubtful, and $64,501 loss) with $404,142 in loans subject to special mention. Classified assets were 17.84 percent of gross capital funds with approximately 10.35 percent of these criticized assets representing other real estate and speculative security issues. The overall loan policy is conservative and supports a well diversified loan portfolio which offsets approximately 50 percent of total deposits. Deposits are considered well proportioned between 66 percent time and 34 percent demand. Bank's investment portfolio is similarly well structured with 15 percent in U.S. Government obligations, 20 percent in Federal Agency issues, and 65 percent comprised of municipal issues and well-rated corporate securities. The maturity distribution of the securities account is satisfactory with 13.1 percent and 90.8 percent coming due within one and five years, respectively. Fixed

assets are fairly valued and depreciated in accordance with suggested guidelines.

Bank has a travel agency subsidiary, First Travel Tours, Inc., with total assets of $52,327 as of December 31, 1974. This subsidiary represents a nominal .074 percent of Bank's assets and poses no financial drain; earnings of $8,727 in 1974, and $13,737 in 1973, represented 16.2 percent and 24.4 percent return on respective year-end assets.

In view of Bank's performing and conservative loan and securities portfolios, and a reasonable liability structure, Bank's overall asset condition appears sound.

(2) *Capital Adequacy*

The examination report disclosed ratios of adjusted capital to risk and total assets of 6.81 percent and 4.82 percent, respectively, and the invested asset ratio was 5.91 percent. Although the invested asset ratio averaged 7.18 percent during the 1974 call period, this ratio in comparison to the year-end and examination date figures declined significantly due to Bank's excellent deposit growth and only fair earnings coupled with a $195,000 dividend payout which presumably was used to support interest expenses incurred by principal shareholders in acquiring control of Bank through a series of purchases between 1972 and 1974. The examination report indicates that Bank's capital is inadequate; moreover, the Comptroller's office further advised management in a letter dated May 5, 1975, that Bank's capital position was deficient. However, no specific dollar amount was requested in view of management's intention to form a bank holding company. Applicant's management is aware of Bank's capital deficiency and has made a commitment to infuse $1.5 million within one year through a capital note sale to its own shareholders and to depositors of Bank.[2] This proposed infusion would significantly improve Bank's capital ratio to the following minimally acceptable levels:

[2] The capital notes will mature in 15 years with an interest rate commensurate with the current bond rate in effect at the time of offering, and will be issued in minimum denominations of $5,000.

Capital Ratios	Examination 3-31-75	$1.5 Million Capital Injection
Adjusted Capital/Risk Assets	6.81	9.35
Adjusted Capital/Total Assets	4.82	6.67
Equity Capital/Invested Assets	6.25	8.71

The currently low capital ratios reflect the cumulative effect of many years of litigation fees and substantial loan charge-offs, which reportedly resulted from questionable loans and advances made to certain directors (and their interests) no longer associated with Bank. Recent personal discussions with deputy regional administrator of National banks, revealed that the Comptroller's office strongly feels (as also indicated in the report of examination) that Mr. Harold Cohn, Bank's chief executive officer, has successfully converted Bank's operation from a chronic problem condition beset with excessive asset classifications, to the present favorable posture. Although Mr. Cohn has served in his present capacity through some of the problem years, his influence was limited due to lack of control ownership which was later successfully achieved in 1973 through a voting trust, created by present principal shareholders. Further discussions with the Comptroller's office indicated that the proposed $1.5M equity infusion would be sufficient, particularly since it represents a 41.1 percent increase in Bank's adjusted capital base as of the examination date. Inasmuch as Applicant will be highly leveraged since the proposed capitalization program will be effected through the sale of debt instruments which are in addition to the 84.4 percent acquisition cost of Bank, future prospects for Bank's capital growth through earnings retention appear reasonable. Applicant's apparent lack of financial flexibility is mitigated by Bank's sound asset condition and the unqualified support and recommendation of the Comptroller's office, which is a direct result of the effectiveness, responsibility and determination of Bank's executive leadership.

In view of the above, we feel that Bank's capital position will be marginally adequate upon completion of the committed capital support program, and that prospects for additional capital enhancement over the 12-year debt amortization period appear reasonably favorable.

(3) *Earnings Prospects*

The following ratios, expressed as a percentage of average total assets, compare the operation of Bank with those of Seventh District member banks of comparable deposit size in Illinois for the indicated calendar years:

	1972		1973		1974	
	Bank	Avg.	Bank	Avg.	Bank	Avg.
Total Operating Income	5.24	5.95	6.00	6.45	6.37	7.18
Net Income After Taxes	.58	.77	.67	.79	.59	.76

Bank's earnings have been traditionally low due in part to legal fees, litigation settlements, and loan charge-offs, which were primarily attributable to actions taken by certain directors no longer associated with Bank; since 1966 the expenses aggregated approximately $2 million. 1974 earnings, which represented a .87 percent return on average total assets before taxes and security gains or losses, declined from the previous year because of the charge-off of $1.5 million in defaulted capital notes of Franklin N.Y. Corp. Analysis of pro forma earnings as of June 30, 1975, indicates that Bank (after adjustment for taxes) has earned by mid-year a .59 percent return on $81.5 million in total assets. Extending this rate of return to include the second half of this year, it is reasonably evident that Bank may earn well above one percent for the entire year. This earnings performance and potential is directly related to substantial deposit growth which resulted after Bank established a drive-in facility in a nearby shopping center in 1974. Using comparative data supplied by Applicant, Bank's deposits increased 26.4 percent between June 1974 and 1975, and 16.4 percent for the first half of 1975. Although deposit growth may eventually strain Bank's capital requirements despite the proposed $1.5 million equity infusion

by Applicant, Bank's current and potential earnings are favorable enough (in view of Bank's sound asset structure and its responsible and capable management) to mitigate any serious doubts about future capital adequacy.

(4) *Management*

Directors and officers—Bank's board of directors consists of nine members, three of whom serve as officers along with two other individuals. Chief Executive Officer Harold Cohn, age 58, has served with the Bank for the past nine years and has, in the opinion of the Comptroller's office, successfully converted Bank's operation from a chronic problem condition to the present favorable posture. Vice President and Comptroller Ralph E. Kuhlman, age 39, supervises Bank operations, and Executive Vice President Joseph E. Franks, age 45, assisted by Vice President John Biordi, are charged with supervision of the lending area. Bank's management has been traditionally weak in the lending area; consequently, a strong effort is currently being undertaken to secure the services of a knowledgeable lending officer. Since the previous report of examination, four new individuals have been elected to serve on the board, who for the most part are replacing former directors that have sold their voting interests to Applicant's principal shareholders. Despite the extensive restructuring, the directorate appears attentive and active, and their collective efforts are demonstrated in the excellent growth and earnings pattern Bank is currently experiencing.

Although Bank's executive leadership, along with the controlling interests comprising the voting trust, have been associated with Bank during its problem years, the consolidated effect of their individual control represented less than ten percent of Bank prior to May 1972. Prior to present control (voting trust formed in 1973 controlled 57.4 percent, and currently controls 86.1 percent), Bank's operations were influenced by directors' disharmony, particularly those of the Projansky interests which included the singular interest of Bank's former

chairman, Irwing Projansky. During 1967 Mr. Projansky, and Bank's former president, Arthur Keller, among others, were indicted as defendants in a stock fraud and conspiracy case involving Hercules, Galion Products, Inc., which was listed on the American Stock Exchange. Bank at that time had 68.6 percent of its assets classified (excluding special mention), and merited a rating. Since then, through the leadership of Mr. Cohn, Bank's financial integrity and public confidence in this institution have been gradually restored.

In view of the above, Bank's management is considered to be satisfactory.

(5) *Future Prospects*

Bank is located in Lincolnwood, Illinois, which has a population of approximately 14,000, comprised basically of middle to high income residents. Although Bank is adjacent to the city of Chicago, about twelve miles northwest of the "Loop," management feels its primary trade area extends only in a two mile radius, encompassing 35,000 to 40,000 residents of similar financial status as those in Lincolnwood. A few manufacturing firms are in the community, and the service and retail establishments are sufficient and convenient. With the opening of Bank's new drive-in facility in a nearby shopping center in March 1974, Bank experienced accelerated growth due to its excellent location.

Under present management, Bank's prospects for continued growth in deposits and earnings are considered favorable.

Applicant

(1) *Financial History and Condition*

History—Applicant was recently organized under the laws of the State of Illinois for the express purpose of becoming a bank holding company with respect to Bank. The corporation has not engaged in any business activities to date other than those coincidental to the organization and filing of the subject application.

Asset condition—Applicant's asset condition initially will be entirely dependent upon the condition of its proposed subsidiary Bank. As discussed previously, analysis of the latest report of examination disclosed Bank to have sound financial resources and satisfactory management. Moreover, upon completion of the $1.5 million capital improvement program committed by Applicant, Bank's capital position will be marginally adequate. Consequently, upon consummation of the proposed transaction, Applicant's asset condition would be considered satisfactory.

(2) *Capital Adequacy*

Capital funds in relation to liabilities—Upon consummation of the proposed acquisition, Applicant will have capital funds of $686,101 in relation to acquisition debt of $3,697,000, for a total debt to equity ratio of 5.39 to 1. Upon completion of the committed equity infusion of $1.5 million into Bank, the preceding ratio will increase to 7.57 to 1, since the proposed capitalization will be offset by a debt capital sale by Applicant in like amount. In view of the total amount of debt, Applicant appears to be highly leveraged with debt representing approximately 88 percent of pro forma assets for the first year. Applicant's debt servicing program is solely dependent upon Bank's earnings which are reasonably expected to slightly exceed one percent of average total assets for 1975, and thereafter. Initially, Bank's earnings are generally needed to offset inordinate deposit growth previously detailed; however, in anticipation of the subsequent leveling off of this deposit growth, dividend payouts should not seriously jeopardize Bank's capital structure. It is noted that Bank's presently inadequate capital position is being substantially strengthened (41 percent increase in Bank's adjusted capital structure as of the examination date), despite the fact that initial dividend payments may temporarily reduce the resulting capital ratios. Furthermore, Bank's sound asset condition and satisfactory management lend weight to our belief that Bank has reasonably favorable pros-

pects for future capital enhancement through earnings retention. Applicant does not intend to utilize Bank's earnings to retire its capital notes. As proposed, Applicant will derive funds from a capital stock sale upon the notes' maturity in 1990-91.

In view of the above, Applicant's capital position is considered to be marginally adequate.

(3) *Earnings Prospects*

Initially, Applicant's source of earnings would consist of dividends received from Bank in addition to a cash flow resulting from tax benefit derived in filing consolidated tax returns. The earnings prospects of Bank, which were previously discussed, are considered favorable and appear sufficient to retire Applicant's proposed acquisition debt. Consequently, Applicant's earnings prospects appear adequate.

(4) *Management*

Applicant's board of directors will consist of Chairman of the Board Dr. Fred Weitz, President Harold Cohn, Donald Kaufman and Harry Zaidenberg who are currently principal owners of Bank through a voting trust created for their collective benefit. (Additional details of Mr. Cohn's qualifications are discussed in the "Bank" section of this memorandum.)

Additionally, three senior officers of Bank will serve as officers of Applicant: Joseph E. Franks as vice president, Ralph Kuhlman as treasurer, and Robert J. O'Rourke as secretary. Control management is expected to carry on and exemplify the sound and conservative managerial philosophy developed in Bank; consequently, Applicant's management is considered to be similarly satisfactory.

(5) *Future Prospects*

Applicant's prospects depend upon consummation of the subject proposal and condition and prospects of its proposed subsidiary bank, which we regard to be satisfactory in view of Applicant's commitment to increase Bank's equity capital base by $1.5 million. Accordingly, Applicant's future prospects appear reasonably favorable.

Competition

Applicant is a non-operating corporation formed for the purpose of becoming a bank holding company through the acquisition of The First National Bank of Lincolnwood ("Bank"). With deposits of $65.7 million, Applicant will assume Bank's position as the 107th largest banking organization in the State of Illinois, accounting for 0.11 percent of the total state commercial bank deposits.* Bank, which is located in the Chicago area banking market, is the 67th largest of 286 commercial banks in the relevant market, and holds approximately 0.16 percent of the commercial bank deposits in the market. Since the proposal is essentially a restructuring of Bank's ownership whereby the ownership of Bank will be shifted from individuals to a corporation owned by the same individuals, consummation of the proposal would eliminate neither existing or potential competition, nor would it increase the concentration of banking resources in any relevant market. As such, competitive considerations involved in the proposal are viewed as being consistent with approval of the application.

Convenience and Needs Considerations

Area banking needs are believed adequately served at present. The proposed formation represents merely a restructuring of the ownership of Bank with no significant changes in Bank's operations or services offered to the public. However, certain limited public benefits should arise as a result of approval of the application. First, due to the infusion of $1.5 million in equity capital, Bank's legal lending limit will be increased thereby increasing the total amount which could be extended to any one borrower. Second, the increased flexibility afforded by the holding company form of organization will

* All banking data are as of December 31, 1974.

enable Applicant to provide financially related activities and services that could be beneficial to customers and depositors of Bank in the future. On balance, convenience and needs considerations are viewed as being consistent with approval.

FEDERAL RESERVE BANK OF CHICAGO
230 South La Salle Street
Chicago, Illinois 60690
(312) HA 7-2320

October 10, 1975

Clearing Unit
Division of Banking Supervision and Regulation
Board of Governors of the
Federal Reserve System
Washington, D.C. 20551

Gentlemen:

This letter regards the application by First Lincolnwood Corp., Lincolnwood, Illinois ("Applicant"), for prior approval of action to become a bank holding company through the acquistion of 80 percent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois ("Bank"). Applicant's letter of September 4, 1975, incorporates certain changes related to the proposed capital injection into Bank and its effect upon the pro forma balance sheet, and certain other changes including amendments to the debt retirement schedule.

Acquisition debt to be incurred by the holding company remains at $3,697,000. However, a previously proposed issue by Applicant of $1,500,000 in 15-year capital notes, which was to have been downstreamed into Bank as equity, has been eliminated. Instead, Bank will sell $1,000,000 of capital notes and $1,071,875 worth of common stock (30,625 shares) to principals of Applicant; 15,756 of the new Bank shares would be exchanged by the principals for shares of Applicant. From conversations with Applicant's president, Mr. Harold Cohn, we understand that it is presently contemplated that no funds will be borrowed by principals of Applicant to acquire the shares. Dr. Fred Weitz, chairman of the Board, and principal shareholder of Applicant, plans to sell a motel, which would net him over $300,000. The four principals of Applicant would subscribe to the additional shares in proportions similar to their present

ownership of Bank. If the principals do borrow, it would be from an unaffiliated source and the amounts involved would be small. No further details are available because no definite plans to borrow have been made.

As a result of the change, the total amount of capital to be injected into Bank has increased, but the amount of equity to be injected has decreased, which we regard as a slightly unfavorable aspect of Applicant's revised plans. However, in total, we do not believe the changes discussed in the letter significantly alter the proposal. The capital position of the Bank would remain less than adequate but substantially improved. Principals of Applicant incurred substantial debt to acquire control of the Bank from the Projansky group, which was responsible for its earlier problems. Since becoming influential in managing the affairs of Bank, principals of Applicant have substantially improved its overall condition. Applicant's projections of Bank growth and earnings, which appear realistic, indicate that Bank's capital should not be further impaired during the debt retirement period. In the long run, prospects for continued improvement in Bank's overall condition appear favorable. Accordingly, we continue to recommend approval of the application.

The September 4, 1975, letter from Applicant also described the history of present management's acquisition of control of Bank from the Projansky group. According to the letter, discussions with this Reserve Bank led the new management of Bank to believe that a holding company application would receive favorable consideration. Present members of the Reserve Bank Staff do not recollect giving such assurances, although one of the officers who may have discussed the proposal with representatives of Applicant has retired. Considering that principals of Applicant were attempting to acquire control from the Projansky group, which had been responsible for the bank's earlier problems, we would not consider it unusual that some encouragement may have been offered; nevertheless, we feel certain that no firm commitments would have been made. This aspect of

Applicant's letter was discussed with Mr. O'Rourke who consulted Mr. Harold Cohn. Mr. Cohn's memory of the specifics of the conversation is reportedly vague, but he also indicated that no firm commitments were made.

Very truly yours,

/s/ Franklin D. Dreyer
Franklin D. Dreyer
Vice President

[SEAL]

THE ADMINISTRATOR OF NATIONAL BANKS
Washington, D.C. 20219

July 24, 1975

Board of Governors of the
Federal Reserve System
Washington, D.C. 20551

Re: Application by First Lincolnwood Corporation, Lincolnwood, Illinois, to become a bank holding company and to acquire The First National Bank of Lincolnwood, Lincolnwood, Illinois

Gentlemen:

This is in reply to a letter of June 3, 1975, submitted to this Office by the Federal Reserve Bank of Chicago requesting our views and recommendations pursuant to Section 3 of the Bank Holding Company Act of 1956 (as amended) concerning the subject proposal.

First Lincolnwood Corporation, Lincolnwood, Illinois, the applicant, wishes to become a registered bank holding company and has submitted an application to acquire The First National Bank of Lincolnwood, Lincolnwood, Illinois. The applicant has no previous financial history and at present does not operate any subsidiaries.

The First National Bank of Lincolnwood, Lincolnwood, Illinois, the proposed subsidiary, was organized in 1955 and currently has deposits of $65.7 million. Lincolnwood is located adjacent to the City of Chicago approximately 12 miles northwest of the Loop. The service area of the proposed subsidiary extends in a two-mile radius and includes light manufacturing firms and service and retail establishments.

The proposed subsidiary competes in Lincolnwood with the $70.2 million deposit Bank of Lincolnwood. Additional competition is provided by National Bank of Albany Park in Chicago with deposits of $95.5 million as well as by the large Chicago-based commercial banks.

The proposed transaction is basically a corporate reorganization whereby control of the subject bank will be transferred from individual ownership to a corporation owned by the same individuals. Because on one operating bank is involved, this acquistion, in itself, will have no effect on competition in Lincolnwood.

The important consideration in evaluating this application is the financing of the acquisition. The present proposal, which involves both a share exchange and the assumption of existing liabilities, would require the applicant to incur substantial long-term debt. In addition the applicant proposes to place $1.5 million in capital notes in the local area and to use the proceeds to augment the equity capital of the bank. The source of funds for servicing this debt will be dividends received from the resulting subsidiary. In order to sustain the necessary level of dividend payout and to provide internally generated capital for projected growth, the recent earning performance of the bank will have to be improved. The record of present management in turning operations around during the past five years offers encouragement that this improvement can be accomplished.

Consummation of the proposed transaction under the present arrangements will result in the transfer to the applicant of a large portion of the debt burden of those stockholders who are financing their purchases of First National Bank of Lincolnwood stock. The beneficiaries of this transfer will be the four principals who control the bank through a voting trust agreement and who will be relieved from their primary obligations on outstanding loans.

Accordingly, it is the view of this Office that the acquisition of The First National Bank of Lincolnwood should be denied until its capital, as distinguished from that of the holding company, is strengthened.

Very truly yours,

/s/ [Illegible]
Acting Comptroller of the Currency

[LOGO]

CORNER OF LINCOLN AND DEVON

Telephone: Chicago 583-4800 Lincolnwood 676-3000
Lincolnwood, Illinois

HAROLD COHN
President & Vice Chairman of Board

September 4, 1975

Board of Governors
of the
Federal Reserve System
Washington, D. C. 20551

Attn: Clearing Unit
Division of Banking Supervision and Regulation

Gentlemen:

In response to written correspondence dated July 28, 1975 and August 8, 1975 by Mr. John N. Lyon, Assistant Director, Division of Banking Supervision and Regulation, and in accordance with discussions held in meeting with members of your staff on August 18, 1975, the First Lincolnwood Corp. hereby submits pertinent information and amendments to it's application to acquire shares of the First National Bank of Lincolnwood, Lincolnwood, Illinois.

It is the Applicant's intention to eliminate the $1,500,-000.00 Capital Note issue by the First Lincolnwood Corp. The applicant intends to enhance the Bank's Equity Capital as follows:

a.) Within three to six months after approval of the application $1,000,000.00 of Capital Notes of the First National Bank of Lincolnwood will be sold. These Notes will be issued in minimum denominations of $5,000.00 each with a maturity not to exceed 15 years bearing interest at a rate competitive with

the current money market at the time of issue. The above mentioned Notes will have a minimum maturity of seven years. The Applicant feels that present customers of the Bank will be attracted to the Capital Note issue thereby decreasing the time deposits of the First National Bank of Lincolnwood and consequently only increasing the Bank's expenses by approximately $20,000.00 annually which would represent a savings of $100,000.00 per annum to the proposed Holding Company.

(b) Within three to six months after approval of the application $1,071,875.00 of common stock of the First National Bank of Lincolnwood is proposed to be sold to enhance the Equity Capital of the Bank. 15,756 shares of the proposed additional common stock issue will be purchased by the principal parties involved in this transaction and exchanged for shares of the First Lincolnwood Corp. so that a minimum of 80% ownership can be maintained. Debt incurred to date of application will not be increased due to the acquisition of the above described shares of common stock of the First National Bank of Lincolnwood.

The following amended statements are attached giving effect to changes proposed in item a and b:

(1.) Projection of Statement of Condition—First National Bank of Lincolnwood.

(2.) Projection of Income and Expenses—First National Bank of Lincolnwood.

(3.) Pro Forma Statement of Revenue and Expenses and Debt Amortization—First Lincolnwood Corp.

(4.) Notes to Financial Statements

(5.) Pro Forma Statement of Estimated earnings First Lincolnwood Corp.—year ended 12-31-76

(6.) Pro Forma Balance Sheet—First Lincolnwood Corp.

The special dividend as outlined on page five (5) of the "Confidential Section" of the application is no longer applicable since the application does not fall under the delegated authority of the Federal Reserve Board in Chicago. Total dividends for 1975 have been reduced from $830,000.00 to $449,000.00 to maintain proper capital to deposit ratios for the Bank. The remaining portion of $381,000.00 has been spread over the twelve (12) year repayment program of debt retirement.

The applicant hereby states that the debt incurred by the principals involved is guaranteed by said principals. The principals will continue to guaranty this indebtedness when it is transferred to the First Lincolnwood Corp.

The applicant wishes to expand upon it's Confidential reasons for this transaction as previously outlined on page six (6) of the "Confidential Section" of the application. This perhaps is the most important response to our various communications and meetings. It enables the applicant to acquaint the Board with the serious problems that have been rectified under the direction of the present management of the Bank and the principal parties involved in this transaction.

It is felt by all of the parties involved in this transaction that the formation of the First Lincolnwood Corp. is in the best interest of the Bank and the majority and minority shareholders in that the debt transfer to the Holding Company will remove the burden of excessive taxation from the principal parties, and assure the continuity of responsible Bank Management. The minority shareholders of course are of important concern to everyone. These shareholders will most definitely benefit from the continuing growth of their investment while benefiting from the projected dividend as outlined in attached statements.

Please be advised that the amendments outlined in the contents of this letter were discussed in meeting with Messrs. Thomas De Shazo and Robert Bloom of the Office of the Comptroller of the Currency on August 18, 1975. Mr. De Shazo and Mr. Bloom indicated that these amendments were most agreeable with them and that the position of the Comptroller's Office would be favorable towards the subject application.

The applicant wishes to thank the Board for it's consideration and the opportunity to reply to the Comptroller's comments of July 24, 1975. Please feel free to call upon the applicant at your convenience for any additional information that may be required.

Sincerely,

/s/ Harold Cohn
HAROLD COHN
President

CC: Federal Reserve Bank in Chicago
Comptroller of the Currency, Washington, D.C.
Regional Administrator, Comptroller of the Currency, Chicago,
Department of Justice, Washington, D.C.—Attn: Antitrust Div.

PROJECTION OF STATEMENT OF CONDITION
(HUNDREDS OMITTED)

ASSETS LIABILITIES	DEC. 31, 1975	DEC. 31, 1976	DEC. 31, 1977	DEC. 31, 1978	DEC. 31, 1979	DEC. 31, 1980	DEC. 31, 1981	DEC.31, 1982	DEC. 31, 1983	DEC. 31, 1984	DEC. 31, 1985	DEC. 31, 1986
ASSETS:												
CASH & DUE FROM BANKS	8,777	9,655	10,621	11,682	12,851	14,136	15,550	17,105	18,815	20,697	22,767	25,044
INVESTMENTS												
TAXABLE	19,671	21,639	23,801	26,183	28,800	31,681	34,848	38,331	42,165	46,382	51,020	56,122
NON TAXABLE	10,401	11,441	12,585	13,843	15,228	16,750	18,425	20,268	22,295	24,524	26,976	29,674
LOANS & DISCOUNTS	35,641	39,205	43,126	47,438	52,182	57,400	63,140	69,454	76,399	84,039	92,443	101,687
FIXED ASSETS	1,285	1,413	1,555	1,710	1,881	2,069	2,276	2,504	2,754	3,029	3,332	3,665
OTHER ASSETS	1,154	1,269	1,396	1,536	1,689	1,858	2,044	2,249	2,474	2,721	2,993	3,292
TOTAL ASSETS (1)	76,929	84,622	93,084	102,392	112,631	123,894	136,283	149,911	164,902	181,392	199,531	219,484
LIABILITIES:												
DEPOSITS (2)												
DEMAND	26,742	29,492	32,529	35,843	39,510	43,517	47,940	52,784	58,107	63,798	70,178	77,196
TIME	42,199	46,686	51,549	56,879	62,665	69,009	75,914	83,483	91,754	100,964	110,924	121,821
TOTAL DEPOSITS	68,941	76,178	84,078	92,722	102,175	112,526	123,854	136,267	149,861	164,762	181,102	199,017
OTHER LIABILITIES	1,808	1,989	2,187	2,406	2,647	2,912	3,203	3,523	3,875	4,263	4,689	5,158
RESERVES ON LOANS (3)	285	314	345	380	417	459	505	556	611	672	739	813
STOCKHOLDERS EQUITY:												
CAPITAL NOTES*	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1.000
CAPITAL	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750
SURPLUS	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750	1,750
UNDIVIDED PROFITS	1,395	1,641	1,974	2,384	2,892	3,497	4,221	5,065	6,055	7,195	8,501	9,996
TOTAL EQUITY CAPITAL (4)	5,895	6,141	6,474	6,884	7,392	7,997	8,721	9,565	10,555	11,695	13,001	14,496
TOTAL LIABILITIES	76,929	84,622	93,084	102,392	112,631	123,894	136,283	149,911	164,902	181,392	199,531	219,484

(NOTES TO FINANCIAL STATEMENTS ARE ATTACHED)

CAPITAL NOTES PROPOSED TO BE ISSUED BY THE FIRST NATIONAL BANK OF LINCOLNWOOD WITHIN 3 TO 6 MONTHS AFTER APPLICATION IS APPROVED. CAPITAL NOTES WILL BE ISSUED IN MINIMUM DENOMINATIONS OF $5,000,00 EACH WITH A MATURITY NOT TO EXCEED 15 YEARS BEARING INTEREST AT A RATE COMPETITIVE WITH THE CURRENT MONEY MARKET AT THE TIME OF ISSUE.

PROJECTION OF INCOME & EXPENSES
(HUNDREDS OMITTED)

INCOME:	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
LOANS	2,588	2,846	3,131	3,445	3,787	4,167	4,584	5,044	5,648	6,102	6,712	7,3
INVESTMENTS TAXABLE	1,306	1,419	1,537	1,677	1,830	1,995	2,176	2,374	2,591	2,825	3,108	3,4
INVESTMENTS NONTAXABLE	421	480	553	622	699	786	883	992	1,113	1,249	1,374	1,511
SERVICE CHARGES - DEP.ACCTS	140	154	169	186	205	225	248	273	300	330	363	399
OTHER INCOME	285	314	345	380	417	460	506	556	611	672	739	813
TOTAL INCOME	4,740	5,213	5,735	6,310	6,938	7,633	8,397	9,239	10,163	11,178	12,296	13,525
ENSES:												
SALARY & STAFF BENEFITS	950	1,045	1,150	1,265	1,391	1,530	1,684	1,852	2,038	2,241	2,465	2,712
INTEREST	1,952	2,152	2,374	2,618	2,884	3,179	3,504	3,861	4,253	4,684	5,158	5,680
OCCUPANCY	123	136	149	164	180	198	218	240	264	291	320	352
DEPRECIATION	70	77	85	93	103	113	124	137	150	165	182	200
OTHER	762	838	922	1,015	1,116	1,227	1,350	1,486	1,634	1,797	1,977	2,175
INT.CAPITAL NOTES	80	80	80	80	80	80	80	80	80	80	80	80
TOTAL EXPENSES	3,937	4,328	4,760	5,235	5,754	6,327	6,960	7,656	8,419	9,258	10,182	11,199
OPERATING INCOME:												
BEFORE TAX	803	885	975	1,075	1,184	1,306	1,437	1,583	1,744	1,920	2,114	2,326
* TAXES ON OPERATING INCOME(5)	147	52	72	99	126	156	184	215	248	279	326	376
NET OPERATING INCOME	656	833	903	976	1,058	1,150	1,253	1,368	1,496	1,641	1,788	1,950
DISPOSITION OF NET INCOME:												
DIVIDENDS	449	587	570	566	550	545	529	524	506	501	482	455
NET INCOME AFTER DIVIDENDS	207	246	333	410	508	605	724	844	990	1,140	1,306	1,495

* IT IS ANTICIPATED THAT APPLICANT WILL FILE A CONSOLIDATED INCOME TAX RETURN WITH THE BANK
TAXES ARE COMPUTED AT 48%, NET OF HOLDING COMPANY INTEREST EXPENSE AND NONTAXABLE INVESTMENTS
(NOTES TO FINANCIAL STATEMENTS ARE ATTACHED)

PRO FORMA STATEMENT OF REVENUE & EXPENSES & DEBT AMORTIZATION
(HUNDREDS OMITTED)

REVENUE:	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
DIVIDENDS	39	470	456	453	440	436	423	419	405	401	386	364
TOTAL REVENUE	39	470	456	453	440	436	423	419	405	401	386	364
DISBURSEMENTS:												
BANK LOAN - PRIN. REDUCTION *	-0-	315	315	325	325	335	335	345	345	355	355	347
INTEREST EXPENSE	74	296	271	245	220	193	167	140	112	85	56	28
MISC. EXPENSE	1	1	1	2	2	2	3	3	3	4	4	4
INCOME TAX CREDIT ***	(36)	(142)	(131)	(119)	(107)	(94)	(82)	(69)	(55)	(43)	(29)	(15)
TOTAL DISBURSEMENTS	39	470	456	453	440	436	423	419	405	401	386	364
OUTSTANDING BALANCE BANK LOAN	3,697	3,697	3,382	3,067	2,742	2,417	2,082	1,747	1,402	1,057	702	347
* PRINCIPAL REDUCTION	-0-	315	315	325	325	335	335	345	345	355	355	347
	3,697	3,382	3,067	2,742	2,417	2,082	1,747	1,402	1,057	702	347	-0-

*** INTEREST AND EXPENSES TIMES AN ASSUMED TAX RATE OF 48%

IT IS ANTICIPATED THAT APPLICANT AND BANK WILL FILE A CONSOLIDATED INCOME TAX RETURN.

(NOTES TO FINANCIAL STATEMENTS ARE ATTACHED)

AMENDMENT TO PAGE 5—
"CONFIDENTIAL SECTION"

NOTES TO FINANCIAL STATEMENTS

Net operating income before taxes is computed at approximately 1.05% of total assets. The net operating income ratio of 1.05% of total assets represents a higher ratio than previously experienced primarily due to a decrease in legal expenses previously incurred. Legal expenses incurred during the year from 1966 to 1974 total $470,-446.38 which is well above the normal expense incurred in the course of business. Charged off loans, net of recoveries for the same period total $1,287,499.58. Losses suffered due to the settlement of certain litigation during this period total $191,000.00. The above mentioned losses and legal expenses total $1,948,945.96. Responsibility for losses incurred during this period rests with previous management as evidenced by comparison of Regulatory agency examination reports for the period discussed. It is current managements opinion that these losses and expenses are non-recurring and that for this reason the Bank's earnings and subsequently it's equity capital will be enhanced considerably. Assets have been redistributed to show an increase in the Municipal Bond Portfolio and an upgrading of tax exempt yields in the future.

Generally income and expense totals have been computed in accordance with published operating ratios of member banks of the Seventh Federal Reserve District for banks with deposits between $50,000,000.00 and $100,000,000.00.

(1) Asset growth represents an approximate increase of 10% per year.

(2) Demand Deposit and time deposit ratios to total deposits represent deposit trends of the First National Bank of Lincolnwood based upon previous years.

(3) Reserve for loan losses is computed at .8% of Loans and Discounts.

(4) Total Equity Capital reflects the infusion of $1,000,-000.00 from the sale of Capital Notes by the First National Bank of Lincolnwood and the sale of $1,071,-875.00 of additional common stock of the First National Bank of Lincolnwood less a $400,000.00 dividend to be declared to the shareholders of the First National Bank of Lincolnwood before the proposed acquisition to enable the principal parties to bring the interest current on the indebtedness that they have incurred. The sale of Capital Notes and additional common stock of the First National Bank of Lincolnwood is anticipated to take place within three to six months after the proposed acquisition.

(5) Income tax liability reflects consolidation of First Lincolnwood Corp. and The First National Bank of Lincolnwood.

AMENDMENT TO PAGE 7—
"CONFIDENTIAL SECTION"

FORM F.R. Y-1

EXHIBIT C—FINANCIAL & MANAGERIAL INFORMATION

Pro Forma Statement of
Estimated Earnings
First Lincolnwood Corp.
Year ended 12-31-76

Income:

Dividends		$470,000.00
Cash Flow from Subsidiary— Re: Tax effect of consolidation		142,000.00
	Total	$612,000.00
Interest Expense		$296,000.00
Prin. Reduction on Note		315,000.00
Misc. Expense		$612,000.00

AMENDMENT TO PAGE 31—"OPEN SECTION"

FORM F.R. Y-1

EXHIBIT C—FINANCIAL & MANAGERIAL INFORMATION

Pro Forma Balance Sheet
First Lincolnwood Corp.

Assets

Cash (1)	$ 3,500.00
Investment in Subsidiary: (2)	
Capital Stock—* (At average cost)	
1st National Bank of Lincolnwood (80%)	4,931,061.00
	$4,934,561.00
Liabilities & Stockholders Equity:	
Note Payable (3)	$3,697,000.00
Capital (1.00 par value)	140,000.00
Undistributed Equity in Company & Subsidiary	1,097,561.00
	$1,237,561.00
Total Liabilities & Stockholders Equity	$4,934,561.00

(1) Cash represents amount paid in as a minimum to form a corporation.

(2) Investment in subsidiary shown on 140,000 shares. 124,244 shares at an average cost of $35.25 per share plus an additional 15,756 shares at a cost of $35.00 per share. These additional shares are proposed to be acquired and exchanged for shares of the First Lincolnwood Corp. so that a minimum of 80% ownership of the Bank may be maintained. Investment in subsidiary carries an allocated premium of $1,235,061.00 at December 31, '74. Book value of common stock of the First National Bank of Lincolnwood at 12/31/74 is stated at $26.40 per share.

(3) Note to Central National Bank of Chicago at current prime rate to be retired over a 12 year period as illustrated in the Pro Forma Statement of Revenue and expenses and debt amortization of First Lincolnwood Corp.

[SEAL]

THE ADMINISTRATOR OF NATIONAL BANKS
Washington, D.C. 20219

Board of Governors of the
Federal Reserve System
Washington, D.C. 20551

September 26, 1975

Re: Application by First Lincolnwood Corporation, Lincolnwood, Illinois, to become a bank holding company and to acquire The First National Bank of Lincolnwood, Lincolnwood, Illinois

Gentlemen:

This letter is in reference to our former letter of July 24, 1975, in which this Office recommended disapproval of the subject application. Disapproval of the earlier application was recommended because the bank's capital was considered inadequate and its earnings appeared insufficient to support the dividend payout necessary to service the debt incurred while generating capital for growth.

The present proposal decreases the obligation of the holding company by $1,500,000 and the capital of the bank will be increased by $2,000,000 in equal portions of equity and debt. This arrangement is superior to the original proposal as it will strengthen the ownership support aspect over the next decade. With the reduced dividend requirements and capital increase planned, more flexibility and strength is provided.

Accordingly, it is the view of this Office that the proposed revised transaction should be approved.

Very truly yours,

/s/ Robert Bloom
Acting Comptroller of the Currency

3(a)(1) APPLICATION REQUIRING BOARD ACTION
(Internal Target Date: December 7, 1975)

Federal Reserve District 7 Date December 3, 1975

By: First Lincolnwood Corp., Lincolnwood, Illinois ("Applicant").

For: Prior approval to become a bank holding company through the acquistion of 80 per cent or more of the voting shares of The First National Bank of Lincolnwood, Lincolnwood, Illinois ("Bank").

Acquisition debt of $3.7 million will equal 75% of purchase price and 123% of book value of shares to be acquired.

STATE AND MARKET DATA:	Bank	
Total Domestic Deposits (as of 12/31/74)	$65.7 million	
Rank/Per Cent of State Deposits	107/	.1%
Rank/Per Cent of Relevant Market	67/	.2%

FINANCIAL DATA:[1] Applicant (Pro forma)	Parent Company Only		Combined
	Stated Value	Net Asset Value	Net Asset Value
Total Assets	$4.9 million	$3.0 million	$79.2 million
Total Liabilities	$3.7 million	$3.7 million	$79.4 million
Stockholders' Equity	$1.2 million	$(.7 million)	$ (.2 million)
Total Liabilities/Equity	3 : 1	—	—
Bank to be Acquired	Call Rept. 9/30/75		Call Rept. 12/31/74
Invested Asset Ratio	5.3%		6.6%
Amt. to bring to 9%	$2.5 million [2]		$1.4 million
Amt. to bring to peer group mean of 10.0%	$3.1 million		$1.9 million
	Most Recent Exam		Prior Exam
Rate (Exam Date)	(3/75)		(4/74)

[1] Financial data does not reflect inclusion of proposed injections to Bank of $1.1 million in equity and $1.0 million in debt capital. If these injections were included Applicant would have a total liabilities/equity ratio of 1.7:1 on a stated basis, 14.8:1 on a net asset basis, and 101:1 on a combined basis.

[2] Bank's invested asset ratio would be 6.8 per cent with the proposed injections of $1.1 million in equity and $1.0 million in debt

RECOMMENDATIONS:

Comptroller of the Currency—Denial (7/24/75) Appendix A; Approval (9/26/75) Appendix B
Department of Justice—None received
Federal Reserve Bank of Chicago—Approval
Supervision and Regulation Department—Approval
Research Department—Approval
Division of Research and Statistics—Denial
Division of Banking Supervision and Regulation—Denial

/s/ Bruce L. Brumbaugh
(Reviewer)

/s/ Kevin M. Raymond
(Analyst)

Board staff agrees with the Reserve Bank that the significant issue is Applicant's high degree of leverage which may strain Bank's capital, but staff does not agree with the Reserve Bank's analysis and recommendation and believes that the application should be denied.

COMMENTS ON ISSUE:

Applicant proposes to incur acquistion debt of $3.7 million. Board staff analysis indicates that Bank's capital ratios will be strained during amortization of this debt. This analysis assumes Bank's annual asset growth will be 10 per cent and that Bank's earnings will be 0.85 per cent of total assets.[3] Board staff projections assumed improved earnings capability of Bank from approximately 0.6 per cent of total assets for the past three years to the 0.85 per cent figure, which differs slightly from Applicant's average projected return of 0.92 per cent. Staff projections indicate that Bank's capital/asset ratio will remain below 6 per cent during the 12

capital, reflecting a deficiency from 9.0 per cent of $1.5 million, and from 10.0 per cent of $2.1 million.

[3] During the past three years banks in Illinois with deposits of $25-$100 million in size earned an average of $0.85 per cent of total assets.

years required to retire the $3.7 million acquisition debt. In our opinion the strain on Bank's earnings to service this $3.7 million debt, in itself, is sufficient to warrant denial of the application.

In addition, Applicant has stated that Bank plans to augment its capital accounts through the sale of $1.1 million in equity capital and $1.0 million in debt capital within three to six months of approval of this application. Applicant's principals have stated that they will purchase the additional $1.1 million equity and that customers of Bank will purchase the additional $1.0 million in debt capital. Other demands may be placed on Bank, as to definite plans for raising the $2.1 million of additional capital have been provided other than $300,000 which Applicant's Chairman expects to be made available from the sale of a motel for purchase of Bank stock. While Applicant's principals' financial statements reflect aggregate net worth of $3.0 million, a review of these financial statements indicates that they have limited amounts of liquid assets. Despite Applicant's principals stated intention not to use borrowed funds to provide additional capital for Bank, Board staff believes it is likely that debt may be used to make the capital contributions.

The addition of the $2.1 million of capital would raise Bank's 1975 year-end estimated total capital/total asset ratio from 5.2 to 7.4 per cent. However, amortization of the $1.0 million capital debt in addition to the parent's acquisition debt of $3.7 million would result in Bank's capital/asset ratio declining to 5.2 per cent in the twelfth year. If the additional $1.1 million in equity capital is also treated as debt, Bank's capital/asset ratio would decline to 4.8 per cent in the twelfth year.

Board staff views these ratios with concern. It is noted that under each amortization assumption, Bank's capital is strained by the debt incurred. In view of these ratios and the uncertainty as to the source of funds for the proposed injections, Board staff concludes that the proposal reflects limited financial flexibility and does not warrant approval. While present bank management is regarded as capable, it would appear desirable that

Bank's overall capital position should be materially improved and that financing arrangements for the proposed capital injections into Bank be made more definite.

OTHER COMMENTS:

The Reserve Bank states that Bank was a "problem" in 1967, and has been turned into a viable institution by present management. Board staff's review of Bank's examination reports from 1965 through 1975 indicates that the Comptroller of the Currency consistently viewed the overall condition of Bank as . While management of Bank is presently viewed as satisfactory, Board staff does not believe that the improvements which present management has made ameliorates the capital problem.

Applicant asserts that loan charge-offs and legal expenses generally attributable to the actions of former management have cost the Bank $2.0 million since 1966. While these expenses were apparently not the fault of present management, Board staff believes they should not be cause for approving the instant application.

Applicant asserts that Applicant's principals, who controlled 57 per cent of Bank in 1973, bought out the shares of Bank held by Mr. Irving Projansky, an alleged undesirable figure, who had been Chairman/President of Bank in the late 1960's.[3] Applicant states that this purchase resulted in additional debt of $1.5 million, and was done after consulting with the Comptroller of the Currency and the Federal Reserve Bank of Chicago (Appendix C, page 4). Applicant states it "felt assured that a holding company application would be met with

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[3] Mr. Projansky has since been imprisoned for his fraudulent activities while associated with Bank. Applicant's current Chairman, Dr. Weitz, was indicted in connection with these activities but charges were dismissed apparently because of a lack of evidence. Dr. Weitz was suspended by the Comptroller of the Currency as a Bank director from 1967-1972 for the duration of the charges, and was re-instated after the charges were dismissed. According to the application, Dr. Weitz would own 40 per cent of Applicant's shares after consummation.

favorable comments by the governing bodies mentioned due to the excellent examination reports and the recent fine reputation of the Bank." Officials of the Chicago Regional Administrator's Office and the Reserve Bank cannot document any specific suggestions for this purchase (Appendix D, page 2), but both feel such a suggestion would have been possible at that time. Board Staff believes that the purchase had a desirable objective, although 57% of Bank's stock was already controlled by principals of Applicant, compared to the Projansky group block of 30 per cent. Moreover, the use of debt to accomplish the purchase would have been a decision of the individuals involved, and must be serviced from Bank earnings. That debt is proposed to be assumed by Applicant.[4]

The Comptroller of the Currency, in a letter to the Board of July 24, 1975, recommended denial of the application based on the magnitude of the debt involved and low capital position of Bank. Applicant met with the Comptroller's Office in Washington, and agreed to modify the proposal, eliminating a $1.5 million note issue which was to have been downstreamed to Bank as equity capital, and having Bank raise $2.1 million in debt and equity capital directly. Also, as part of the original proposal, Applicant's interest would have required special dividends from Bank of $830,000 for 1975. The modified proposal calls for dividends of $449,000, of which $433,000 have been paid as of August 28, 1975. These dividend requirements for 1975 represent a sharp increase from $195,000 reported for 1974. Board staff met with Applicant and indicated to Applicant that its case was marginal due to the overall debt involved and capital position of Bank. The Comptroller has since recommended approval based on the modified proposal. However, Board staff does not believe that the modification

[4] Board staff also notes that the purchase of Projansky group interests in Bank gave Applicant's principals over 80 per cent ownership which would ultimately result in favorable tax considerations for Appellant. Mr. Projansky's individual ownership of Bank shares was less than 10 per cent.

would bring Bank's capital situation to an acceptable level.

Board staff concludes that approval of this application is not consistent with the Board's current posture on bank capital and liquidity.

VOTING TRUST AGREEMENT

THIS AGREEMENT is made on the undersigned date between certain stockholders of the FIRST NATIONAL BANK OF LINCOLNWOOD, a national banking corporation, (hereinafter called the Bank) who shall become parties to this Agreement by signing their names hereto or by acquiring voting trust certificates, as herein provided, herein called the Stockholders, and Joseph P. Stelzer, Donald Kaufman, Harry Zaidenberg, and George B. Collins, herein called the Trustees.

The parties stipulate and recite that:

A. The Stockholders believe it to be essential to their interests to protect themselves against a piece-meal acquisition of shares by parties acting on behalf of interests the good intentions of which are not manifest to the parties and

B. The Stockholders believe that, by banding together in a voting trust agreement, a continuity of good management can be assured to the Bank, for the mutual benefit of the parties and the Bank, and

C. The Stockholders have requested the Trustees, in accordance with the authority found in Illinois Revised Statutes Chapter 32, Section 157.30a, to take the legal title to the shares deposited today, and such other shares as may be deposited during the term of the trust, the same to be held by them upon an active trust, and to act under the terms of this Agreement, until August 1, 1982, and the Trustees have agreed to such request;

For the reasons recited above, the Stockholders in consideration of their mutual promises do agree with each other and with the Trustees and the Trustees do agree with the Stockholders and with each other as follows:

SECTION ONE

TRANSFER OF STOCK TO TRUSTEES

The undersigned parties holding shares of the capital stock of First National Bank of Lincolnwood in the numbers set opposite the name of such stockholder shall deposit the certificates therefor, appropriately endorsed, with the Trustees, for transfer into the name of the Trustees. Upon the making of such deposits, all shares represented by the stock certificates so deposited shall be transferred upon the books of the First National Bank of Lincolnwood into the names of the Trustees, who are hereby authorized to cause such transfers, and also to cause any further transfers of the shares to be made which may become necessary by reason of any changes which may occur in the persons holding the office of Trustee. The Trustees shall also have the right, in connection with any pledge of said shares, to allow the transfer thereof to a nominee for a lender, with retention of voting rights in the Trustees until default. Each shareholder shall receive in exchange for such deposit voting trust certificates reciting such deposit, in the form provided for herein, with one unit of the voting trust being issued for each share deposited. The holders of said units of this voting trust shall be referred to herein as "Unitholders".

SECTION TWO

TRUSTEE'S CONTROL OVER STOCK

During the term hereof, the Trustees shall possess the legal title to such shares deposited, including the right to vote in person or by proxy in respect to any and all such shares, it being however, understood that the Trustees will execute an order upon the First National Bank of Lincolnwood to pay the dividends on the shares held in trust directly to the unitholders under this voting trust, in accordance with the ownership of said units as shown on the records of the voting trust. The Trustees may also contract with any lender upon the shares held in trust for the payment of all or any part of any such dividend direct to such lender. Any such dividend order shall be executed by the Trustees only upon the written direction of the unitholder involved.

SECTION THREE

VOTING TRUST CERTIFICATE

The Trustees do hereby promise and agree with the stockholders and with every unitholder of this trust that from time to time upon request they will cause to be issued to the several stockholders in respect of all stock deposited by them certificates for units in substantially the following form:

VOTING TRUST CERTIFICATE

FIRST NATIONAL BANK OF LINCOLNWOOD

No. .... units

This certifies that ..... has deposited ..... shares of the capital stock of the above-named First National Bank of Lincolnwood each with the Trustees under an agreement between Joseph P. Stelzer, Donald Kaufman, Harry Zaidenberg and George B. Collins, Trustees, and certain stockholders of the Bank, which agreement was entered into on ....., 1972. This certificate and the interest represented thereby is transferable only on the books of the Trustees upon the presentation and surrender thereof. The holder of this certificate takes it subject to all the terms and conditions of the aforesaid agreement between the Trustees and certain stockholders of the corporation, and becomes a party to the agreement, and is entitled to the benefits thereof.

In witness whereof, the Trustees have caused this certificate to be signed on ....., 19...

(Signatures of trustees)

SECTION FOUR

ADDITIONAL STOCK

From time to time after this Agreement shall have taken effect, the Trustees may at their option receive any additional shares of the capital stock of First National Bank of Lincolnwood upon the terms and the conditions of this Agreement, and in respect of all such shares so received, the Trustees will issue and deliver certificates similar to those above-mentioned, and those depositing shareholders shall thereafter be parties to this Agreement by reason of their acceptance of a voting trust certificate or certificates.

SECTION FIVE

SALE OF STOCK AND CERTIFICATES BY STOCKHOLDERS

During the term of this Agreement the unitholders will not have possession of the shares of which they are the equitable owners. The unitholders will be at liberty to deal with Trustees' certificates by sale, or in any other manner, without the prior approval or consent of the Trustees, subject to any agreement which may be made as to the transfer of any such units. The parties depositing stock contemplate that there may be such agreements, and it is, therefore, agreed that the Secretary of this voting trust will maintain a file of all such agreements at the offices of the voting trust, and that a copy of each such agreement will be deposited with the Secretary.

SECTION SIX

SALES OF ALL STOCK BY TRUSTEES

During the period of this trust agreement, the Trustees shall have the power to sell shares held in the trust provided that, prior to such sale, the Trustees receive, the

irrevocable and affirmative written permission of the holders of one-half of the outstanding voting trust units. All of the shares held by the Trustees must be included in any such sale, and each shareholder does hereby waive the right to have any shares excluded from such sale. Upon such sale, all shares shall be sold for the same price. In the event that the Trustees deem it wise to sell less than all of the shares at once, and in the event that the Trustees are acting under the irrevocable written instruction of the holders of two-thirds in number of the outstanding voting trust units, then the sale and the proceeds thereof shall be pro-rated on an equal basis among all the unitholders, and the voting trust shall remain in force as to the shares retained. The irrevocable consents required shall be limited in time to not more than one year and all consents accepted by the Trustees shall expire on the same day. In the event that a sale is made by a pledgee of the shares held by the voting trust, in accordance with a security agreement between unitholders and a lender, then no specific permission for such sale shall be required, and the unitholders do, by their acceptance of this agreement, agree that any such lender shall have such power of sale as the loan documents may grant.

SECTION SEVEN

DISTRIBUTION OF PROCEEDS OF SALE OF STOCK

In case of a sale at any time during the period aforesaid, the proceeds shall be distributed by the Trustees forthwith to and among the holders of trustee's certificates upon the surrender of the certificates. In the event the sale shall be of less than all the shares then held, said distribution of funds shall be made upon surrender of that portion of the units represented by the shares sold. In no event will the Trustees hold said funds beyond the time reasonably required to redeem the Trustee's certificates. In handling such redemption, the Trustees may discharge any debts against the stock sold before making such redemption as required by any loan instruments executed by any unitholder.

SECTION EIGHT

TERMINATION OF AGREEMENT

This Agreement shall terminate on August 1, 1982. Upon termination, pursuant to this section, and upon the surrender of the trustee certificates, the shares themselves shall be transferred into the names of the holders of the trustees' certificates, and delivered to such holders in the proportion of their respective holdings, and this Agreement shall then be at an end. In the event said shares are pledged then the shares shall be transferred upon the execution by the stockholder of appropriate hypothecation documents, and the obligation of the Trustees shall be considered satisfied upon the delivery to the stockholder of an amended collateral receipt from a lending institution, the stockholder expressly consenting to the hypothecation of said shares. This Agreement shall also terminate and be of no force and effect with respect to the sale or other disposition, after default, of any of the shares of stock pledged with the Harris Trust and Savings Bank or with respect to any other rights, options and remedies said Bank may have pursuant to the Pledge Agreement hereinafter referred to, including without limitation any sale involving said Bank as purchaser.

SECTION NINE

SALE OR PURCHASE OF STOCK OR CERTIFICATES BY TRUSTEES

Nothing in this Agreement shall deprive the Trustees as individuals of the privilege of selling or otherwise disposing of voting trust certificates belonging to them, or of purchasing additional certificates, or of purchasing additional stock and selling it, or of joining with others in the purchase of stock or certificates from themselves as voting trustees or otherwise.

SECTION TEN

TRUSTEES' COMPENSATION AND EXPENSES

The Trustees shall not be compensated for their services as such Trustees. The Trustees intend to contract with the First National Bank of Lincolnwood for transfer agent services, and into that the cost thereof shall be nominal, and shall be paid by the persons requiring the specific transfers of existing trust units.

SECTION ELEVEN

TRUSTEES' RESIGNATION

Any Trustee may at any time resign by delivering to the other Trustees his resignation in writing, to take effect upon delivery of a copy thereof to the secretary of the voting trust. No formal acceptance of the resignation shall be required.

SECTION TWELVE

TRUSTEES' VOTING RIGHTS

All questions arising between the Trustees shall from time to time be determined by decision of the greater number of those attending or giving a proxy for the meeting of the Trustees at which such action is to be taken, which proxy may include an instruction on how to vote on any particular issue or question, which instruction may be binding. Any person may be a proxy. The Trustees shall have the authority to establish their own rules of procedure.

SECTION THIRTEEN

RESIGNATION OF TRUSTEES AND FILLING TRUSTEE VACANCIES AND ADDING TRUSTEES

In the event that the position of any voting trustee becomes vacant for any reason, then that vacancy will

be filled as follows: The unitholders will elect a new voting trustee or trustees by a majority vote, with each unit-holder having a proportionate number of votes to the number of voting trust certificates held by him for each of the vacant trusteeships. The voting will be cumulative, in accordance with the procedure practiced for the voting of shares in Illinois corporations. All such successor trustees shall have all of the estate, title, rights and powers of an original voting trustee.

SECTION FOURTEEN

VOTING TRUSTEES' PROXIES

The voting trustees may vote stock of the First National Bank of Lincolnwood in person or by proxy.

SECTION FIFTEEN

VOTING TRUSTEES' LIABILITY

In voting the shares of stock or doing any act with respect to the control or management of the Bank or its affairs, as holders of the stock deposited hereunder, the voting trustees shall exercise their best judgment in the interest of the beneficiaries of the trust, and to the end that its affairs shall be properly managed. No voting trustee shall be liable for any error of judgment or mistake of law or other mistake, or for anything save only his wilful misconduct or dishonesty.

SECTION SIXTEEN

VOTING TRUSTEES DEALING WITH THE FIRST NATIONAL BANK OF LINCOLNWOOD

The voting trustees shall not be disqualified by their office from dealing or contracting with the First National Bank of Lincolnwood in any manner, and may serve as directors, officers or employees, attorneys, or agents of said Bank.

SECTION SEVENTEEN

VOTING RIGHTS OF TRUSTEES

The voting trustees shall have the same right to cast any vote on any question coming before the stockholders of the First National Bank of Lincolnwood which would inure to any stockholders holding stock in said Bank.

SECTION EIGHTEEN

PLEDGE OF SHARES HELD IN VOTING TRUST

It is expressly understood that the shares initially deposited in the voting trust (and identified in Exhibit A to the Pledge Agreement hereinafter referred to) are and remain subject to the lien and pledge of a Pledge and Security Agreement between certain of the undersigned and the Harris Trust and Savings Bank, dated as of _____, 1973 (the "Pledge Agreement") and the depositing stockholders authorize and direct the voting trustees to deliver such shares, duly endorsed for transfer by any three such trustees to the Bank all as provided for, and contemplated in, said Pledge Agreement and authorize and direct the voting trustees to join in said Pledge Agreement for the purpose of pledging and assigning to said Bank any right, title or interest that said voting trustees may have in said shares. The depositing stockholders further authorize any three of the voting trustees to deliver and deposit with the Bank the voting trust certificates issued on account of said pledged shares and agree to duly endorse for transfer such related certificates which shall become a part of the Pledged Securities, as defined in said Pledge Agreement, all on the terms and conditions as provided for therein. No depositing shareholder shall have any claim against any trustee by reason of any such pledge or loan. Any three voting trustees shall have the right and power to execute any documents required by any lender in order to effect the purposes of any loan against the shares held by such lender. The voting trust certificates representing any shares against which there is a loan shall be stamped with the legend "A LOAN IS OUTSTANDING AGAINST THE SHARES REPRESENTED BY THIS VOTING TRUST CERTIFICATE".

SECTION NINETEEN

TRANSFER OF VOTING TRUST CERTIFICATES AND OPERATION OF VOTING TRUST

The voting trustees shall designate a person to act as its secretary, which person may also be an agent or employee of the First National Bank of Lincolnwood. The Bank shall be the transfer agent. The voting trust certificate book shall be kept at the Bank and shall be available for inspection by any shareholder at any time during business hours. Any two voting trustees may sign a voting trust certificate. The original voting trust agreement shall be lodged with the First National Bank of Lincolnwood and shall be made a part of its official corporate records, and shall be available for inspection at all times during business hours by any unit holder of shareholder desiring to inspect such agreement as required by Chapter 32, Section 157.30a of the Illinois Revised Statutes. In the event that the voting trustees cannot agree on the nomination of a slate of directors for the First National Bank of Lincolnwood, by reason of an even division in their numbers, then and in that event the voting trustees shall execute a proxy to such person as may be nominated by the holder or holders of a majority of the outstanding units of the Voting Trust. The written instruction of such majority holders of voting trust certificates (by number of units) shall be sufficient to require the voting

SECTION TWENTY

NAME OF VOTING TRUST

This Voting Trust shall be known as "The First National Bank of Lincolnwood Voting Trust".

IN WITNESS WHEREOF the parties hereto have executed this Agreement, and the Trustees have accepted the trust herein created.

Dated at Chicago and Lincolnwood, Illinois this 20th day of February, 1973.

SHAREHOLDERS

Name	Address	Number of shares
/s/ George B. Collins	4527 Church St.	
/s/ Donald Kaufman	304 Ridge Road	
/s/ Harry Zaidenberg	10 N. Clark St.	
/s/ Joseph P. Stelzer		

TRUSTEES

/s/ Donald Kaufman — /s/ Harry Zaidenberg

/s/ Joseph P. Stelzer — /s/ George B. Collins

The undersigned, depositors of the number of shares set forth opposite their names, do, on the date hereinafter set forth, become parties to the aforesaid voting trust agreement, and acknowledge receipt of a copy of said voting trust agreement.

THE FIRST NATIONAL BANK OF LINCOLNWOOD

Consolidated Statement of Condition

ASSETS	December 31, 1974	1973
Cash and due from Banks	$ 9,333,281.62	$ 7,384,164.60
Investment Securities: (Note 2)		
United States Government Obligations	2,609,015.50	3,665,206.37
Obligations of Federal Agencies	4,410,881.15	6,113,695.09
Obligations of States and Political Subdivisions	7,577,578.69	6,960,356.87
Other Securities	7,172,052.64	7,889,391.96
Federal Funds Sold	4,150,000.00	1,500,000.00
Loans	33,917,558.93	28,427,620.82
Bank Premises and Equipment (Note 3)	1,166,316.66	1,041,938.79
Income Earned, But Not Collected	432,198.50	459,488.95
Other Real Estate Owned	185,527.85	46,169.62
Other Assets	101,007.47	88,860.24
Total Assets	$71,135,419.02	$63,577,168.77

LIABILITIES, RESERVE AND SHAREHOLDERS' EQUITY

Liabilities:		
Demand Deposits	$24,747,399.45	$24,339,199.46
Time Deposits	40,902,620.03	34,439,245.30
Total Deposits	65,650,019.48	58,778,444.76
Unearned Income	1,397,111.17	1,011,278.44
Other Liabilities	277,421.29	141,614.15
Total Liabilities	67,324,551.94	59,931,337.35
RESERVE FOR POSSIBLE LOAN LOSSES (Notes 1 and 4)	185,009.83	367,967.21
SHAREHOLDERS' EQUITY:		
Common Stock, $10.00 Par Value, 144,375 Shares Authorized and Outstanding	1,443,750.00	1,443,750.00
Capital Surplus	506,250.00	456,250.00
Retained Earnings	1,685,850.25	1,377,864.21
Total Shareholders' Equity	3,615,850.25	3,277,864.21
Total Liabilities, Reserve and Shareholders' Equity	$71,135,419.02	$63,577,168.77

See Accompanying Notes to Consolidated Financial Statements

THE FIRST NATIONAL BANK OF LINCOLNWOOD

Consolidated Statement of Income

	Year Ended December 31, 1974	1973
OPERATING INCOME		
Interest and Fees on Loans	$ 2,595,915.87	$ 2,043,274.94
Income on Federal Funds Sold and Other Funds	385,656.41	35,318.69
Interest and Dividends on:		
U.S. Treasury Securities	170,075.98	225,412.38
U.S. Government Agency Obligations	343,642.58	459,635.06
Obligations of States and Political Subdivisions	265,051.17	307,476.82
Other Securities	511,229.51	509,999.11
Service Charges on Deposit Accounts	105,833.64	112,726.23
Other Service Charges	40,375.22	30,042.20
Other Income	91,083.46	85,786.52
Total Operating Income	$ 4,526,863.84	$ 3,812,674.87
OPERATING EXPENSES		
Salaries	$ 837,556.70	$ 658,557.98
Profit Sharing and Other Employee Benefits	183,959.58	163,939.82
Interest on Deposits	1,858,733.35	1,618,248.60
Interest on Borrowed Funds and Federal Funds Purchased	616.44	44,930.97
Occupancy Expense	146,343.83	99,454.34
Equipment Rentals, Depreciation and Maintenance	86,305.74	63,629.51
Provision For Possible Loan Losses (Note 4)	143,000.00	107,500.00
Other Operating Expenses	689,445.13	528,494.40
Total Operating Expenses	3,945,960.77	3,284,658.52
Income Before Income Taxes	582,903.07	528,016.35
Applicable Income Taxes (Note 5)	136,853.71	78,522.01
Income Before Securities Gains or (Losses)	446,049.36	449,094.34
Net Security Loss After Related Income Tax of $26,402.00 in 1973		(41,080.35)
Income Before Extraordinary Loss and cumulative effect of a change in an Accounting Estimate	446,049.36	408,013.99
Extraordinary Loss, Net of Applicable Income Tax of $71,516.09 (Note 7)	(77,476.73)	—
Cumulative Effect in change of an Accounting Estimate (Notes 1 and 4)	189,897.77	—
Net Income	$ 558,460.40	$ 408,013.99
Earnings Per Share:		
Income Before Securities Gains or (Losses)	$ 3.09	$ 3.11
Income Before Extraordinary Loss and Cumulative Effect of a Change in an Accounting Estimate	$ 3.09	$ 2.83
Extraordinary Loss	(.54)	—
Cumulative Effect of a Change in an Accounting Estimate	1.32	—
Net Income	$ 3.87	$ 2.83

See Accompanying Notes to Consolidated Financial Statements

THE FIRST NATIONAL BANK OF LINCOLNWOOD

Consolidated Statement of Shareholders' Equity, And Undivided Profits

	Year Ended December 31, 1974	1973
SHAREHOLDERS' EQUITY		
Balance, Beginning of year	$ 3,277,864.21	$ 2,852,459.14
Miscellaneous Adjustments	—	4,995.29
Balance, January 1, As Adjusted	3,277,864.21	2,857,453.43
Additions:		
Net Income	558,460.40	408,013.99
Transfer from Valuation Reserve Other Real Estate Owned	—	12,396.79
Total Additions	558,460.40	420,410.78
Deductions:		
Cash Dividend ($1.35 per share)	194,906.25	—
Transfer from Undivided Profits to Reserve for Possible Loan Losses, Net of Tax Effect of $23,593.94 (Note 4)	25,560.11	—
Total Deductions	220,466.36	—
Balance, End of Year	$ 3,615,858.25	$ 3,277,864.21
UNDIVIDED PROFITS		
Balance, Beginning of Year	$ 1,377,864.21	$ 952,459.14
Miscellaneous Adjustments	—	4,995.29
Balance, January 1, As Adjusted	1,377,864.21	957,453.43
Additions:		
Net Income	558,460.40	408,013.99
Transfer From Valuation Reserve— Other Real Estate Owned	—	12,396.79
Total Additions	558,460.40	420,410.78
Deductions:		
Cash Dividend ($1.35 Per Share)	194,906.25	—
Transfer To Surplus	50,000.00	—
Transfer To Reserve For Possible Loan Losses, Net Of Tax Effect Of $23,593.94 (Note 4)	25,560.11	—
Total Deductions	270,466.36	—
Balance, End Of Year	$ 1,665,858.25	$ 1,377,864.21

See Accompanying Notes to Consolidated Financial Statements

THE FIRST NATIONAL BANK OF LINCOLNWOOD

Consolidated Statement of Changes In Financial Position

	Year Ended December 31,	
SOURCES OF FUNDS	1974	1973
From Operations:		
Income Before Extraordinary Loss and Cumulative Effect of a Change in an Accounting Estimate	$ 446,049.30	$ 408,013.99
Depreciation And Amortization of Premises and Equipment	84,683.61	43,194.46
Provision For Possible Loan Losses	143,000.00	107,500.00
Provision For Deferred Income Taxes	36,593.94	8,000.00
Total From Operations	710,326.91	566,708.45
Increase In Deposits	6,871,574.72	2,655,840.01
Decrease In Investment Securities	2,779,112.29	2,703,473.51
Increase In Unearned Income	385,832.73	382,626.58
Increase In Other Liabilities	122,607.14	15,594.55
Decrease (Increase) In Income Earned, But Not Collected	27,290.45	(40,005.42)
Total Sources Of Funds	$10,896,944.24	$ 6,284,237.68
USES OF FUNDS		
Increase In Loans Before Net Charge-Offs	$ 5,664,962.77	$ 5,142,879.23
Increase (Decrease) In Federal Funds Sold	2,650,000.00	(300,000.00)
Increase (Decrease) In Cash And Due From Banks	1,949,006.93	(38,710.70)
Increase In Bank Premises And Equipment	209,001.50	135,503.18
Increase (Decrease) In Other Real Estate Owned	139,358.83	(3,418.13)
Cash Dividend Declared	194,906.25	—
Extraordinary Loss (Net Of Tax Effect)	77,476.73	—
Decrease In Due To Federal Reserve Bank	—	1,431,194.56
Increase (Decrease) In Other Assets	12,141.23	(83,209.48)
Total Uses Of Funds	$10,896,944.24	$ 6,284,237.68

See Accompanying Notes to Consolidated Financial Statements

THE FIRST NATIONAL BANK OF LINCOLNWOOD

Notes to Consolidated Financial Statements

Note 1—Summary of Significant Accounting Policies—The accounting and reporting policies of the First National Bank of Lincolnwood and its subsidiaries generally conform with accepted accounting principles and predominant practices within the banking industry.

Principles of Consolidation—The accompanying financial statements are consolidated to include the accounts of the First National Bank of Lincolnwood and its wholly owned subsidiaries, Lincolnwood National Safe Deposit Company and First Travel Tours, Incorporated. All material intercompany accounts and transactions have been eliminated.

Investment Securities—Investment securities are stated at cost adjusted for amortization of premium and accretion of discount. Net gains or losses, if any, on the sale of these securities are shown as a separate item on the consolidated statement of income.

Bank Premises and Equipment—Bank premises and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is computed principally on the straight line method for the [Illegible] and improvements thereon. Furniture and equipment are depreciated using both straight line and accelerated methods over their estimated useful lives of the assets. The bank's drive-in facility is being depreciated on an accelerated method over its initial lease term.

Reserve For Possible Loan Losses and Change in Accounting Estimate—The provision for possible loan losses charged to operating expenses is computed by applying an historic five-year

moving average ratio of net charge-offs to total average loans to the average loans outstanding for the current year.

The transfer betwen undivided profits and the reserve for possible loan losses represents the amount, net of related tax effect, necessary to adjust the reserve for the amounts to be deducted for income tax purposes.

The reserve is composed of a valuation portion, a contingency portion and a deferred tax portion. Actual loan losses charged to the reserve in excess of the valuation portion would require an additional charge to net income to restore the reserve.

The accounting policies described in the two preceding paragraphs of this footnote were adopted by the bank as of January 1, 1974. In order to implement these accounting policies, which are predominant practices within the banking industry, the bank has recorded in income during 1974 as a "Change in accounting estimate" the amount of $189,887.77, representing the excess for financial statement reporting purposes over income tax reporting purposes of the bank's reserve for possible loan losses as of January 1, 1974.

Income Taxes—Income tax expense is computed on reported income adjusted for differences, primarily municipal income, which will never enter into the computation of taxes payable under applicable tax laws. Accretion of discount on securities and provision for possible loan losses, are accounted for in different time periods for financial reporting purposes than for income tax purposes. Appropriate provisions are made in the consolidated financial statements for deferred taxes in recognition of these timing differences.

Investment tax credits are applied as a reduction of income taxes on the flow-through method.

THE FIRST NATIONAL BANK OF LINCOLNWOOD

Notes to Consolidated Financial Statements

Note 2 — Investment Securities — Accrued discount amounts included in interest and dividends on securities were $45,913.27 in 1974 and $53,632.54 in 1973.

Investment securities carried at $3,334,345.56 and $1,272,781.68 as of December 31, 1974 and 1973 in the Consolidated Statement of Condition were pledged to secure Government and Public Deposits as required by law.

The amounts at which investment securities are carried and their approximate fair market ues are summarized below:

	December 31, 1974		December 31, 1973	
	Book Value	Market Value	Book Value	Market Value
Investment Securities:				
U.S. Treasury Securities	$ 2,689,015.50	$ 2,626,890.61	$ 3,665,206.37	$ 3,596,728.12
Securities of Other United States Government Agencies	4,410,881.15	4,311,875.00	6,113,685.06	6,004,187.50
Obligations of States And Political Subdivisions	7,577,578.68	7,178,506.99	6,960,356.87	6,761,339.92
Other Securities	7,172,052.64	7,171,171.36	7,889,409.57	7,799,820.26
	$21,849,527.97	$21,288,443.96	$24,628,657.87	$24,162,075.80

The schedule of maturities are as set forth below:

	TAXABLE SECURITIES		TAX EXEMPT SECURITIES	
	December 31,		December 31,	
	1974	1973	1974	1973
MATURITIES:				
0-1 Year	$ 2,902,673.25	$ 3,752,981.71	$ 376,148.45	$ 265,192.59
1-5 Years	10,269,181.54	10,576,645.70	6,212,750.14	6,261,068.30
5-10 Years	901,094.50	3,156,173.59	888,680.09	333,095.96
Over 10 Years	199,000.00	182,500.00	100,000.00	100,000.00
	$14,271,949.29	$17,668,301.00	$ 7,577,578.68	$ 6,960,356.87
Average	2 Yr. 8 Mo.	2 Yr. 7 Mo.	3 Yr. 7 Mo.	4 Yr. 1 Mo.

Note 3 — Bank Premises and Equipment — Bank premises and equipment at December 31, are summarized as follows:

	1974			1973
	Cost	Accumulated Depreciation	Net Book Value	Net Book Value
Land	$ 352,871.23	$ —	$ 352,871.23	$ 352,871.23
Main Bank Building	530,400.00	127,313.28	403,086.72	413,731.92
Building Improvements	155,024.54	82,251.29	72,773.25	72,242.79
Drive-In Facility	243,271.77	32,681.69	210,590.08	91,703.83
Furniture and Equipment	278,767.64	151,772.24	126,995.40	123,254.79
Totals	$ 1,560,335.18	$ 394,018.50	$ 1,166,316.68	$ 1,041,998.79

The provision for depreciation and amortization for 1974 and 1973, was $84,663.81 and $43,194.46, respectively.

Notes to Consolidated Financial Statements

Note 4 — Reserve For Possible Loan Losses — A Summary of Changes in the Reserve For Possible Loan Losses is shown below:

	Year Ended December 31, 1974	1973
Balance, Beginning of Year	$ 367,967.21	$ 375,937.77
Recoveries of loans previously charged off	33,569.35	15,868.77
Provision charged to operating expenses	140,000.00	107,500.00
Deferred income taxes charged against earnings	23,593.84	—
Transfer from Undivided Profits after tax effect	25,569.[illegible]	—
	593,69[illegible].61	499,356.54
Loans charged off	208,794.01	131,389.33
Cumulative effect of change in an Accounting Estimate	189,687.77	—
Balance, End of Year	$ 195,006.83	$ 367,967.21
The Balance of the Reserve Consists of:		
Valuation amount	145,854.78	367,967.21
Contingency amount transferred from Undivided Profits	25,560.11	—
Deferred Income Taxes	23,593.94	—
Totals	$ 195,008.83	$ 367,967.21

Note 5 — Income Taxes — As a result of differences between book and tax treatment of accretion of discount on investment securities and provision for possible loan losses, amounts included in the provision for federal income tax of $36,593.94 in 1974 and $8,000.00 in 1973 were deferred. Income tax expense varies from the statutory rate due to tax exempt state and municipal securities interest.

Investment tax credits were approximately $3,700.00 in 1974 and $1,600.00 in 1973.

Note 6 — Lease Commitment — The bank is obligated under a sublease for a parcel of property upon which the bank's drive-in facility is situated. The lease has an initial term through July 30, 1982 and provides for an annual rental of $12,000.00 per year. Additionally, the bank has a renewal option running through July 30, 2002 at the rate of $17,000.00 per year, however, such renewal option is dependent upon the exercise by the lessee of its renewal option with the lessor. The bank is required to pay real estate taxes applicable to the leased property.

Note 7 — Extraordinary Loss — Extraordinary loss results from the liquidation of $150,000.00 Franklin New York Corporation 7.30% Notes due November 15, 1979. The loss on liquidation amounted to $148,993.72 which, net of applicable income taxes of $71,516.99, resulted in a net charge against the current year of $77,476.73.

Directors, Advisory Board and Officers

Board of Directors

Dr. Fred Weitz
Chairman of the Board

Mark A. Rubert
C.P.A.

Harold Cohn
President &
Vice Chairman of the Board

Joseph P. Stelzer
J. P. Stelzer & Associates

Clarence Permut
President Eric Clothing Co.

Harry Zaidenberg
Attorney, Zaidenberg, Hoffman & Schoenfeld

Advisory Board

Robert Dachman
Pasquale De Marco, M.D.
Joseph E. Franks
Donald Harris
Donald Kaufman
Nathan Wagner
Nels E. Werner

Officers

Harold Cohn
President

Joseph E. Franks
Executive Vice President

Paul H. Thomas
Vice President

Rae Belonsky
Assistant Cashier

Sally Schneider
Senior Vice President

Anthony J. Vazquez
Auditor

Evelen Velen
Assistant Cashier

Ralph E. Kuhlman
Vice President & Comptroller

Glenn E. Autenrieth
Assistant Vice President

Ed J. Wendt
Assistant Cashier

Robert J. O'Rourke
Vice President & Cashier

Joseph W. Diosi
Assistant Vice President

Betty Banks
Pro-Cashier

John A. Biordi
Vice President

Goldie Becker
Assistant Cashier

Graham Fletcher
Pro-Cashier

Lincolnwood National Safe Deposit Co.

Joseph E. Franks
President

Anthony J. Vazquez
Secretary

Harold Cohn
Treasurer

First Travel Tours, Inc.

Harold Cohn
President

Sally Schneider
Vice President

Paul H. Thomas
Secretary

Ralph E. Kuhlman
Treasurer

PRO FORMA STATEMENT OF REVENUE & EXPENSES & DEBT AMORTIZATIONS

(HUNDREDS OMITTED)

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
REVENUE:												
DIVIDENDS	754	438	428	428	417	416	406	404	393	391	379	389
TOTAL REVENUE	754	438	428	428	417	416	406	404	393	391	379	389
DISBURSEMENTS:												
BANK LOAN-												
PRIN. REDUCTION *	685	250	250	260	260	270	270	280	280	290	290	312
INTEREST EXPENSE	131	241	221	201	180	159	138	116	94	71	48	25
SUBORDINATED CAPITAL NOTES:												
INTEREST EXPENSE	-0-	120	120	120	120	120	120	120	120	120	120	120
MISC. EXPENSE	1	1	1	2	2	2	3	3	3	4	4	4
INCOME TAX CREDIT ***	(63)	(174)	(164)	(155)	(145)	(135)	(125)	(115)	(104)	(94)	(83)	(72)
TOTAL DISBURSEMENTS	754	438	428	428	417	416	406	404	393	391	379	389
OUTSTANDING BALANCE BANK LOAN (6)	3,697	3,012	2,762	2,512	2,252	1,992	1,722	1,452	1,172	892	602	312
*PRINCIPAL REDUCTION	685	250	250	260	260	270	270	280	280	290	290	312
	3,012	2,762	2,512	2,252	1,992	1,722	1,452	1,172	892	602	312	-0-

***INTEREST AND EXPENSES TIMES AN ASSUMED TAX RATE OF 40%

IT IS ANTICIPATED THAT APPLICANT AND BANK WILL FILE A CONSOLIDATED INCOME TAX RETURN.

(NOTES TO FINANCIAL STATEMENTS ARE ATTACHED)

NOTES TO FINANCIAL STATEMENTS

Net operating income before taxes is computed at 1.07% of total assets. The net operating income ratio of 1.07% of total assets represents a higher ratio than previously experienced primarily due to a decrease in legal expenses previously incurred. Legal expenses incurred during the year from 1966 to 1974 total $470,446.38 which is well above the normal expense incurred in the course of business. Charged off loans, net of recoveries for the same period total $1,287,499.58. Losses suffered due to the settlement of certain litigation during this period total $191,000.00. The above mentioned losses and legal expenses total $1,948,945.96. Responsibility for losses incurred during this period rests with previous management as evidenced by comparison of Regulatory agency examination reports for the period discussed. It is current managements opinion that these losses and expenses are non-recurring and that for this reason the Bank's earnings and subsequently it's equity capital will be enhanced considerably. Assets have been redistributed to show an increase in the Municipal Bond Portfolio and an upgrading of tax exempt yields in the future.

Generally income and expense totals have been computed in accordance with published operating ratios of member banks of the Seventh Federal Reserve District for banks with deposits between $50,000,000.00 and $100,000,000.00.

(1) Asset growth represents an approximate increase of 10% per year.

(2) Demand Deposit and time deposit ratios to total deposits represent recent deposit trends of the First National Bank of Lincolnwood.

(3) Reserve for loan losses is computed at .8% of Loans and Discounts.

(4) Total Equity Capital reflects the infusion of $1,500,000.00 from the sale of Capital Notes by First Lincolnwood Corp.

(5) Income tax liability reflects consolidation of First Lincolnwood Corp. and The First National Bank of Lincolnwood.

(6) The outstanding loan balance of $3,697,000.00 will be reduced immediately after approval of the proposed acquisition by the First Lincolnwood Corp. in the amount of $417,000.00 to bring the debt of the Holding Company to $3,280,000.00 or 74.88% of the original cost of shares of the First National Bank of Lincolnwood. Total Equity Capital is projected after dividend payments plus the infusion of proceeds from the sale of $1,500,000.00 of Capital Notes of the First Lincolnwood Corp.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Date—August 19, 1975

OFFICE CORRESPONDENCE

To Records

From Kevin M. Raymond—kmc

Subject: Meeting with First Lincolnwood Corp., Lincolnwood, Illinois ("Applicant").

Participants:

Board Staff: Messrs. Kline, Brumbaugh, Raymond, Brown (Legal), Martin (R&S).

First Lincolnwood: Harold Cohn (President), Robert O'Rourke (Vice President), Joseph Lutz (Consultant).

Mr. Cohn opened with discussion of background of First National Bank of Lincolnwood ("Bank"), indicating several past problems with "underworld" influence in bank ownership. Mr. Cohn's ownership group purchased a 55 per cent interest in Bank in 1972, and, according to Mr. Cohn, at the persuasion of the "regulators," bought out an additional 35 per cent interest owned by alleged underworld figure, Mr. Perjansky—to get Mr. Perjansky completely out of the Bank. According to Mr. Cohn, debt incurred as a result of the Perjansky purchase was $1,460,000.

Mr. Cohn indicated that the Comptroller of the Currency misunderstood the application and that this may be why a denial recommendation was rendered by the Comptroller of the Currency. Mr. Cohn and his group were to meet with the Comptroller's office later this afternoon, (8/18/75) and attempt to resolve the misunderstanding and perhaps determine the Comptroller's views on the Bank's capital position.

Mr. Cohn also stated that his ownership group received some type of assurance from the "regulators," including F.R. Chicago, at the time of the Perjansky purchase that there would "probably be no problem in getting an approval for a holding company."

SUPREME COURT OF THE UNITED STATES

No. 77-832

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, PETITIONER

—*v.*—

FIRST LINCOLNWOOD CORPORATION

ORDER ALLOWING CERTIORARI. Filed February 21, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

[Received Mar. 3, 1978, Office of Solicitor General]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 262906 121

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-832

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,

Petitioner,

vs.

FIRST LINCOLNWOOD CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

GEORGE B. COLLINS
One North LaSalle Street
Chicago, Illinois 60602
Attorney for Respondent, First Lincolnwood Corporation

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

TABLE OF CONTENTS

LIST OF AUTHORITIES CITED

Cases

Other Authorities

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,

Petitioner,

vs.

FIRST LINCOLNWOOD CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Respondent, First Lincolnwood Corporation, submits that a writ of certiorari should not be granted in this cause.

STATEMENT

The Respondent supplements the Solicitor General's Statement:

The application for bank holding company status of First Lincolnwood Corporation had the approval of the Comptroller of Currency, the Federal Reserve Bank for the Seventh District, and was not opposed by any person, public official, or competing entity. App. 18a & p. 3, *Appellant's Appendix, 7th Cir.* Illinois is a state

which forbids branch banking and chain banking; under Illinois law no bank holding company may own more than one bank. See *Ill. Constitution 1970*, Art. 13, Sec. 8. This holding company did not seek permission to engage in any non-banking enterprise; its only function would be to own stock in the bank, and to provide for the ownership of the bank that tax benefit described at note 4 page 7, of the petition.

The debt attributable to the present ownership of the bank arose when the present owners of the bank bought out certain predecessors who had been convicted of crime. The Seventh Reserve District Report said:

> "The current debt position of the principals is directly tied to acquisition of additional control of bank, and at the same time exercising this control to improve its daily operation and general condition. We believe this control is fundamental to the current well being of the bank, thus, it seems inappropriate to penalize the principals for their accomplishments using debt, by denying their plans for reorganization when their past actions generally support approval of the proposal. The holding company structure will enhance bank's prospects for capital retention." (p. 3), Appendix to Brief of Appellant, 7th Cir., 76-1114).

The Court of Appeals said, in its initial opinion:

> "All parties now agree that the bank's present management . . . is outstanding and has converted the bank to its now favorable condition." (App. 19a).

The transfer from individual ownership, held through a voting trust, to holding company status has absolutely no effect on the existence of or liability for debt; on competition; on the actual identity of ownership; or on management. It will allow a tax deduction for interest paid, and will subject the resulting entity to regulation by the Federal Reserve Board.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW IS ENTIRELY CONSISTENT WITH PRIOR DECISIONS AND WITH THE LEGISLATIVE HISTORY OF THE BANK HOLDING COMPANY ACT.

The statute, Section 3 of the Bank Holding Company Act, as amended, would appear, on its face, to be directed toward anti-trust considerations. (Petition, p. 3) The original legislative history indicated that it was passed because "the dangers accompanying monopoly in this field are particularly undesirable . . ." Senate Report 1095, 84th Congress, p. 1. The 1966 Senate report says that "It was intended to apply in the field of banking and bank holding companies the general purposes of the antitrust laws—to promote competition and to prevent monopoly, and the general purposes of the Glass-Steagall Act of 1933—to prevent unduly extensive connections between banking and other businesses." Senate Report 1179, 89th Congress, p. 2.

In 1966 Congress rejected an attempt to make single bank holding companies subject to the Act, but amended the act to avoid the decisions of this Court in *U.S. v. Philadelphia National Bank*, 374 U.S. 321 (1963) and *U.S. v. First National Bank and Trust Co.*, 376 U.S. 665 (1964). See *Bank Holding Company Regulatory Experience Since 1970*, 8 Indiana L. Rev. 942, 944 (1974-1975). Those cases held, in substance, that, no matter how benign, no anti-competitive merger or acquisition could be allowed. The 1966 amendments gave the Federal Reserve Board the power to approve such transactions if "the anti-competitive effects of the proposed transactions are clearly outweighed in the public interest by the

probable effect of the transaction in meeting the convenience and needs of the community to be served." 12 USC 1842(c)(2).

Thus, the statute, in 1966, had the apparent purpose of allowing a balance between community needs and antitrust considerations. In 1970 the statute was made applicable to one bank holding companies because Congress was concerned that there be adequate safeguards "against the possibility of misuse of the economic power of a bank." *U.S. Code & Cong. Service, 1970,* p. 5535.

The purpose of the bill was to continue "a long standing policy of separating banking from commerce (*ibid,* p. 5522) and, according to a message from President Nixon to the Congress, to avoid "undue concentration of powers" in banks which combine their resources with non banking enterprises.

Governor Burns testified that, if the one-bank holding companies were to be brought under the Act, "the Board would then be simply regulating the bank holding companies, not the banks themselves . . .". Mr. Burns also said that "the . . . distribution of regulatory functions as far as the banks are concerned, would remain entirely unchanged . . ." (*ibid,* p. 5548).

The Federal Reserve Board, in describing the 1966 and 1970 amendments to the statute said that the statute "was designed to achieve two basic objectives. The first was to control bank holding company expansion in order to avoid the creation of monopoly or restraint of trade in banking. The second was to allow bank holding companies to expand into nonbanking activities that are related to banking while maintaining a separation between banking and commerce." The Federal Reserve Systems; Purposes and Functions, 1974 edition, p. 110.

The same publication said that the purpose of extending the Act to one bank holding companies was "to preserve the traditional separation of banking and commerce." (*ibid,* p. 111).

The legislative history of the 1970 amendment does not indicate that the Federal Reserve Board sought or claimed to have the power to deny permission for the formation of a holding company involving nothing more than a redenomination of an existing ownership structure into corporate form. In describing its work in its 1976 report the FRB said, of its Bank Holding Company activity:

> "In other instances, the Board denied proposals that would create, or add to, strains on the financial and managerial resources of the applicant company or any bank or nonbank company involved."

63rd Annual Report, Federal Reserve Board, p. 411 (1976). The report did not discuss denials based upon circumstances which were not affected by reason of the formation of the holding company.

This legislative history was reviewed in *Western Bancshares, Inc. v. Board of Governors,* 480 F.2d 749 (10th Cir. 1973). In that case the Board disapproved an acquisition on the ground that the transaction offered was not fair. The 10th Circuit held, after an examination of the legislative history, part of which we have outlined above, that the purpose of the 1970 amendments was to prevent "possible abuses or future concerns related to monopolistic practices, lessening of competition and extension of a line of credit to finance an unrelated business concern over which it had control."

That court held that the Board's concerns were "competition, tendency to create a monopoly, restraint of

trade, anticompetitive effect, or want in 'meeting the convenience and needs of the community to be served.' " That court found the legislative standard to be "present and declared," *Panama Refining Co. v. Ryan*, 293 U.S. 388, (1935), and reversed the Board, holding that it had no authority to adjudicate the fairness of a transaction. The Federal Reserve Board has ignored the holding, and still adjudicates fairness. *Jackson Hole Banking Corp.*, 63 Fed. Res. Bulletin 934 (Sept. 30, 1977).

In this case the Seventh Circuit denied to the Board the power to refuse an application which would have no practical effect on the competition, on the actual ownership of the bank, on the existence of an indebtedness against the bank's stock, incurred long before the holding company obligation, or on community convenience. There is no statutory requirement as to the capital requirements for a holding company, and the Court did not create one.

The Board has construed the decision below most narrowly in considering other applications for holding company status. In *Citizens Bancorp, Inc.*, decided November 18, 1977, the Board of Governors limited *First Lincolnwood* to its facts in denying an application.

The Board argues, at note 8, p. 11, that the legislative history shows, contrary to its own repeated statements in its own publications, that there was an intent to confer on the Board the duty of refusing a holding company application without regard to whether or not the allowance of the application would cause, increase, create or affect any financial or banking factor which might be present. The Board bases this argument on the repeal, in 1966, of the old "voting permit" statute, which related to "holding company affiliates" and not to statutory bank holding companies.

The problem was that a "holding company affiliate" was not so designated until it had over fifty cent of the stock of a bank, and further, that the statute should be repealed because "(T)heir elimination would remove the confusion that results from the existence of two sets of laws that relate to the same general subject but are based on different definitions of what constitutes a holding company." S. Rep. 1179, 89th Cong. 2d Sess. 12, par. 21 (1966). And, the "voting permit" approach allowed a holding company to avoid regulation (and many did) by simply not voting the stock of the subsidiary bank; the Act was designed to avoid this capability of regulation-avoidance.

The Petition's statement that "Thus, Congress explicitly had provided that a bank holding company should serve as a source of financial strength to its subsidiary bank" (Petition, p. 11, note 8) is not supported by any similar language in the legislative history or in the statute, and it has no basis external to the writings of the Federal Reserve Board.

And, the voting permit avenue of regulation had nothing to do with whether or not a holding company could be formed. It dealt with regulation of existing entities. The present litigation deals with whether or not a holding company may commence, and not with its regulation after commencement.

We believe it to be the clear purpose of the statute to implement an antitrust policy, and to keep banks out of unrelated businesses. Nothing in the statute says that entry is conditioned upon the holding company being of such strength as to add to the existing strength of the Bank, and this subject was simply not discussed in the legislative history, and is not to be found in the language of the statute.

We submit that the decision below is correct.

II.

THE BOARD SHOULD MAKE DETERMINATIONS UNDER THIS STATUTE AS JUDICIAL, AND NOT AS ECONOMIC, DECISIONS.

By its decision, the Court of Appeals requires the Federal Reserve Board to consider a bank holding company application against objective standards, and to allow this convenient method of ownership unless, by its allowance, some definable harm comes, or unless the direct regulator of the bank objects. This is a judicial standard, we submit, and does contradict the basic policy of the Federal Reserve Board. That policy was explained by Mr. Partee, of the Board, in a statement to the Congress, printed at 63 Fed. Res. Bulletin 819. He said, in opposing a bill to unify bank regulation under one Federal banking commissioner (not under the control of the FRB):

> ". . . the Board remains gravely concerned that the removal of its supervisory and regulatory responsibilities . . . would work adversely on the Board's effectiveness in carrying out its monetary policy functions."
>
> "If supervisory standards for bank performance are independently set, there is the very real risk that bank regulation could frustrate the objectives of monetary policy."

This case may be an example of some higher economic policy determining what must be done with a particularly mundane business situation. Ordinary local businessmen want to own their bank in corporate form. They are found to be honorable, capable, and responsive to the emergency thrust on them when it was necessary to buy out a part owner with a criminal record.[1] Their

[1] The acquisition of these shares was made with "some encouragement" from the Federal Reserve Bank of Chicago that a holding company application would be considered. (Appendix, 7th Circuit, Petitioner's Brief, p. 102).

shift to corporate ownership changes nothing as to debt or public convenience, and yet it is denied because the Federal Reserve Board determines that they might not be a "source of strength" to their bank if they are allowed to save $130,000 per year that they will otherwise lose.

It is surely not for us to judge the "monetary policy" of the United States; but this decision should be judged, as in the *Western Bancshares* case, against the defined standards and not as part of "monetary policy". *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

We submit that the Court of Appeals correctly decided this case.

III.

THE DECISION OF THE COURT OF APPEALS LEAVES NO UNREGULATED AREAS WHICH SHOULD BE REGULATED.

At this time, the ownership of the First National Bank of Lincolnwood is in a voting trust, and is entirely unregulated. As an unregulated ownership, it has no requirements upon it at all; and, specifically, it need not be a source of strength to the Bank.

If the petition is denied, this ownership will, upon remand, become corporate, and it will then be subject to regulation under the Bank Holding Company Act.

The decision below, and the voluntary act of the owners of the Bank, *increase* the degree of regulation of the banking industry.

And, nothing is changed as to the direct regulation of the soundness of the bank; that is still the responsibility of the Comptroller of the Currency. 12 USC 26, 27, 57.

The petition argues, at note 12, p. 13, that the Federal Reserve Board examines banks directly; but its 1976 annual report says:

> "National Banks . . . are subject to examination by direction of the Board or the Federal Reserve Bank.
>
> "However, as a matter of practice, they are not examined by either because the law charges the Comptroller of the Currency directly with that responsibility."

63rd Annual Report of the Federal Reserve Board, p. 412 (1976).

If, then, it is considered that more regulation is better, the decision of the Court of Appeals, which allows regulation of the ownership of this bank where such regulation did not previously occur, is plainly right. The Seventh Circuit has, in other cases, found that the addition of another holding company to the Board's regulatory burden was not an undue hardship. *North Lawndale Economic & Development Corp. v. Board of Governors*, 533 F.2d 23 (7th Cir. 1977); *Tri-State Bancorp, Inc. v. Board of Governors*, 524 F.2d 562 (7th Cir. 1975).

IV.

THE FACTS OF THE CASE ARE SUCH AS TO MAKE IT UNLIKELY TO RECUR: THE CASE IS OF GREAT IMPORTANCE TO CERTAIN INDIVIDUALS, BUT IS NOT OF GREAT PUBLIC IMPORTANCE.

The Petition states the teachings of the decision below most broadly; but it is most narrowly viewed by the Federal Reserve Board (*Citizens Bancorp, Inc.*, FRB decision, 11/18/77). The holding, in substance, says that a change to corporate status of the ownership of a bank which is not anti-competitive, does not create any new debt, changes nothing in the operation of the bank, and

serves only to confer on this owner a tax benefit enjoyed by others, should not be denied, in the absence of some specific adverse fact caused by the formation of the holding company.

This decision will be narrowly limited by the Board to its facts; and the factual distinctions from almost all other applications are:

a. The debt owed by the owners already exists, and will exist, whether or not the holding company is formed. It is not incurred in this transaction.

b. The debt arose when the present owners bought out a felon.

c. Holding company status will allow the present owners to keep the bank, through the tax saving, and their management is desirable and approved.

d. The holding company is being formed in a State with no branching and no chain banking; it cannot, therefore, be the precursor to a chain of banks.

e. The holding company has no other business than the ownership of bank shares; its "management resources" need only be sufficient to vote at an annual meeting of the bank and see to the filing of a consolidated tax return.

This "First Lincolnwood Corporation" bears no resemblance to the massive one bank holding companies found in New York and in other states allowing chain or branch banking. This decision will be limited closely by the Board, as was the adverse decision in *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). See *Jackson Hole Banking Corp.*, 63 Fed. Res. Bull. 934 (1977).

We submit that the Courts of Appeals will formulate a body of law on the subject matter of bank holding companies which will, in due time, present an appropriate case for review. This case, while involving $130,000

per year in tax savings to the principals, does not, we submit, have that level of national importance which we understand is expected of cases accepted for review in this Court.

CONCLUSION

We respectfully pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted.

GEORGE B. COLLINS
One North LaSalle Street
Chicago, Illinois 60602

Attorney for Respondent,
First Lincolnwood Corporation

No. 77-832

In the Supreme Court of the United States

OCTOBER TERM, 1977

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, PETITIONER

v.

FIRST LINCOLNWOOD CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

WADE H. MCCREE, JR.,
Solicitor General,

BARBARA ALLEN BABCOCK,
Assistant Attorney General,

HARRIET S. SHAPIRO,
Assistant to the Solicitor General,

RONALD R. GLANCZ,
ROBERT S. GREENSPAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

NEAL L. PETERSEN,
General Counsel,

J. VIRGIL MATTINGLY,
Attorney,
Board of Governors of the Federal Reserve System,
Washington, D.C. 20551.

INDEX

CITATIONS

Cases:

Cases—Continued: Page

Statutes and regulations:

Statutes and regulations—Continued Page

Statutes and regulations—Continued

Miscellaneous:

Miscellaneous—Continued

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OPINIONS BELOW

The opinion of the court of appeals *en banc* (Pet. App. 1a-12a) is reported at 560 F.2d 258. The opinion of a panel of the court of appeals (Pet. App. 15a-32a) is reported at 546 F.2d 718. The order of the Board of Governors of the Federal Reserve System (Pet. App. 24a-27a) is reported at 62 Fed. Res. Bull. 153.

JURISDICTION

The judgment of the court of appeals on rehearing *en banc* (Pet. App. 13a-14a) was entered on July 13, 1977. On October 4, 1977, Mr. Justice Stevens extended the time within which to file a petition for a writ of certiorari to November 10, 1977, and on November 1, 1977, he further extended the time to and including December 10, 1977. The petition was filed on December 9, 1977, and granted on February 21, 1978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Federal Reserve Board must approve an application to form a new bank holding company, even though the financial structure of the company and the bank involved would be unsound, unless formation of the company would cause or worsen unsound financial conditions in the bank.

STATUTE INVOLVED

Section 3 of the Bank Holding Company Act of 1956, 70 Stat. 134-135, as amended, 12 U.S.C. 1842, provides in pertinent part:

> (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; * * *.
>
> * * * * *

> (c) The Board shall not approve—
>
> (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
>
> (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
>
> In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

STATEMENT

1. The First National Bank of Lincolnwood (the Bank) is owned and controlled by four persons. They organized respondent, the First Lincolnwood Corporation, to serve as a bank holding company.[1] The

[1] A "bank holding company" is defined in Section 2(a) of the Bank Holding Company Act, as amended, 12 U.S.C. 1841

owners sought to transfer to respondent both their shares in the Bank and their $3.7 million debt to the Central National Bank of Chicago, a debt secured by those shares and incurred at the time the owners acquired the Bank.[2] In return, the owners would receive the shares of respondent. Respondent would acquire more than 80 percent of the Bank's common stock and assume the personal debt of the stockholders. In addition, respondent planned to issue $1.5 million in 17 year capital notes, using the proceeds to purchase new shares to be issued by the Bank. The purchase would provide the Bank with additional capital. Over the coming years, the dividends on the shares held by respondent would be used to retire the acquisition debt (Pet. App. 17a-19a).

Respondent's acquisition of the Bank would involve a formal restructuring of ownership (Pet. App. 26a). The immediate practical effect of these transactions would be to relieve the Bank's shareholders of primary obligation for the $3.7 million debt and to

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(a), as "any company which has control over any bank [or] over any company that is or becomes a bank holding company * * *." "Any company has control over a bank * * * if [*inter alia*] * * * the company * * * owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank * * *."

[2] This debt was incurred when the current owners of the Bank bought out, or reduced to minority stockholder status, the Bank's former owners and managers after three of those principal officials were indicted for employing the Bank in a stock manipulation scheme that left the Bank in serious financial difficulties (Pet. App. 28a n. 1).

permit tax savings through the filing of a consolidated tax return.[3]

2. Respondent could not acquire the Bank without first obtaining approval of the Federal Reserve Board (the Board), which supervises bank holding companies under the Bank Holding Company Act (the Act). See generally *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 379 U.S. 411. A company seeking to acquire a bank must file an application with the appropriate Federal Reserve Bank,[4] which initially evaluates the proposal and submits a report of relevant facts and recommendations to the Board for decision.[5]

Respondent submitted its application to the Federal Reserve Bank of Chicago. The Chicago Reserve Bank concluded that the Bank's capital position was weak[6]

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[3] If the Bank and respondent were to file a consolidated tax return, the interest on the debt to be assumed by respondent ($260,000 in the first year) could be deducted from the income earned by the Bank in calculating the taxable income of the consolidated entity. The tax savings, which would be approximately $130,000 the first year, could then be transferred to respondent, as a tax-free intercorporate dividend, and used by respondent to retire the acquisition debt. 26 U.S.C. 1501; 26 C.F.R. 1.502-14(a)(1). See Pet. App. 18a-19a.

[4] 12 C.F.R. 225.3(a) and 262.3(b).

[5] 12 C.F.R. 262.3(c).

[6] The Board employs several methods to evaluate the adequacy of capital, the difference between assets and liabilities that represents the margin of protection for the banks' depositors. One standard method is the invested asset ratio, which is the ratio of equity capital to liabilities, less cash on hand; another method is the capital/asset ratio, which is the

and that respondent might be unable adequately to service its debts without further weakening the Bank's capital and financial condition. But "[d]espite the probability that capital ratios may be below Board guidelines" the Chicago Reserve Bank recommended that the Board approve the application because the current management was capable, because respondent proposed to raise $1.5 million in equity capital for the Bank, and because of the tax advantages (A. 21).[7]

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ratio of total capital to total assets. See Heller, *Handbook of Federal Bank Holding Company Law* 129-132 (1976).

These two ratios indicated that the Bank's capital position was weak. The invested capital ratio was 5.3 percent on September 30, 1975 (A. 52). The Board has suggested that the ratio should be at least 9 percent, and the mean ratio for banks similarly situated to the Bank here is 10 percent. Hearings on Problem Banks before the Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. 137 (1976). The Bank's capital/asset ratio in 1975 was 5.2 percent (A. 52). The Board does not generally consider a bank to be soundly capitalized unless the ratio is 8 percent or more.

The Board's staff estimated that the Bank and respondent must acquire between $2.5 and $3.1 million in additional capital to put the Bank on a sound footing (A. 52). But if the Bank must distribute revenues to respondent at a rate sufficient to enable respondent to meet its debt obligations, the Bank's capital/asset ratio would remain below 6 percent during the 12 years proposed by respondent as the debt retirement period, even taking into account the tax savings made possible by the filing of a consolidated income tax return (A. 54).

[7] The recommendation stated (A. 21):

> Bank has a sound asset structure and satisfactory management; however, its capital sufficiency is less than adequate. Although the proposed $1.5 million equity infusion by [respondent] would initially raise capital to a marginally adequate level, [respondent's] high degree of leverage (88 percent of first year assets) and associated debt retirement program, may strain future capital adequacy in view of Bank's recently dramatic deposit growth.

The Comptroller of the Currency, who also submitted a recommendation to the Board,[8] concluded that approval of the transfer "should be denied until [the Bank's] capital, as distinguished from [the capital of] the holding company, is strengthened" (A. 39). The Comptroller thought that the Bank's earnings might not be adequate to service the "substantial long-term debt" incurred by the enterprise (*ibid.*). The Comptroller also was concerned that the formation of the holding company was designed principally to relieve the Bank's present owners of their personal and primary liability to discharge the $3.7 million acquisition debt (*ibid.*).

After receiving these adverse comments, the principal shareholders modified their original proposal by eliminating the plan to have respondent issue $1.5 million in capital notes. The new plan proposed that the Bank would make a combination capital note and stock issue.[9] This modification was intended to im-

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[8] The Comptroller advises the Board with respect to applications for the formation of bank holding companies, but the Board is not required to follow the Comptroller's recommendation (12 U.S.C. 1842(b)). See *Whitney National Bank, supra*, 379 U.S. at 419-421.

[9] The details of the proposal were (A. 40-43):

> (1) The Bank would sell to its present customers $1 million of its capital notes, each with a maturity not to exceed 15 years, and (2) the Bank would sell $1.1 million of com-

prove the Bank's current capital position by $2.1 million, rather than the $1.5 million increase contemplated in the original proposal, but the Bank's debt would be increased by $1 million, and its equity capital would be increased by only $1.1 million (A. 40-41).

The Chicago Reserve Bank again supported the application after reviewing the new plan. It observed, however, that the diminution of the increase in equity capital was "a slightly unfavorable aspect of [respondent's] revised plans," and that the immediate capital position of the Bank "would remain less than adequate but substantially improved" (A. 36).

The change in respondent's plan was received more favorably by the Comptroller, who, on September 27, 1975, changed his recommendation to approval of the application (A. 51).

Members of the Board's staff then prepared and submitted to the Board analyses of and recommendations on the proposal.[10] The staff recommended denial of the application, concluding that "the strain on the Bank's earnings to service [the] $3.7 million debt, in itself, is sufficient to warrant denial of the application" (A. 54). The staff expressed concern that the principal shareholders might be compelled to incur further debt to purchase the additional stock called

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mon stock, of which 15,756 shares would be purchased by the principal shareholders and exchanged for respondent's stock, in order to maintain respondent's 80 percent ownership of the Bank.

[10] See 12 C.F.R. 262.3(c).

for under the amended proposal. It observed that the shareholders "have limited amounts of liquid assets," and that, therefore, despite the owners' "stated intention not to use borrowed funds * * * the Board staff believes it likely that debt may be used to make the capital contributions" (A. 54). The staff therefore recommended against approval of the proposed acquisition, explaining that (*ibid.*):

> Under each amortization assumption, Bank's capital is strained by the debt incurred. In view of these [capital/asset] ratios, and the uncertainty as to the source of funds for the proposed injections, Board staff concludes that the proposal reflects limited financial flexibility and does not warrant approval. While present Bank management is regarded as capable, it would appear desirable that Bank's overall financing arrangements for the proposed capital injections into Bank should be made more definite.

On January 9, 1976, the Board voted to deny respondent's application on financial grounds (Pet. App. 24a-27a). In accepting the recommendation of its staff, the Board stated that it "had indicated on previous occasions that a bank holding company should be a source of financial and managerial strength to its subsidiary bank(s)" (*id.* at 25a) and that respondent would be unable to provide this strength. "In the Board's view, the projected earnings of [respondent] over the debt retirement period appear to be somewhat optimistic in view of Bank's previous earnings record and, even if actually realized, would not provide [respondent] with the financial

flexibility necessary to meet its annual debt service requirements while maintaining adequate capital at Bank" (*ibid.*).

The Board also was "concerned that the financial requirements imposed upon [respondent] as a result of the acquisition debt, and uncertainty as to the source of funds for Bank's proposed capital injections, could prevent [respondent] from resolving any unforeseen problems that may arise at Bank" (Pet. App. 25a-26a). The Board concluded (*id.* at 26a):

> On the basis of the above banking factors, and other facts of record, the Board is of the view that it would not be in the public interest to approve the formation of a bank holding company with an initial debt structure that could result in the weakening of Bank's overall financial condition. Accordingly, the Board concludes that the considerations relating to the banking factors weigh against approval of the application.

3. A divided panel of the court of appeals affirmed, stating that "we have no difficulty in finding that there is substantial evidence to support the denial of [respondent's] application" (Pet. App. 19a).[11]

On rehearing *en banc* the court of appeals set aside the Board's order (Pet. App. 1a-12a). The court reasoned that, although "the Board is empowered to

[11] The panel also rejected two other arguments respondent had made (see Pet. App. 20a-23a). Respondent did not renew these arguments before the *en banc* court (see *id.* at 12a n. 5), and they are not presented for decision in this Court.

deny approval of a bank acquisition upon finding it not to be in the public interest for reasons other than an anticompetitive tendency * * *, the condition or tendency deemed not to be in the public interest must be caused or enhanced by the proposed transaction" (*id.* at 7a). The court ruled that the Board could not "consider questions of bank soundness and public need apart from how these would be altered by formation * * * of a bank holding company" (*id.* at 9a).

The court concluded that respondent's acquisition of the Bank would not itself adversely affect the Bank's financial condition (Pet. App. 4a-5a). The court regarded respondent's assumption of a substantial indebtedness, even in light of the Bank's low capitalization, to be irrelevant, because the indebtedness would simply be shifted from the Bank's current owners to respondent. The acquisition, the court concluded, would not impair "the soundness of operation of the bank" (*id.* at 10a). To the contrary, the court expressed the view that "[t]he only identified effects of the acquisition [*i.e.*, the prospect of tax savings,[12] and the proposed infusion of capital] militate in favor of the acquisition" (*id.* at 11a-12a). The court of appeals therefore remanded the matter to the Board for its approval of respondent's application unless "relevant circumstances * * * have changed" (*id.* at 12a).

[12] See note 3, *supra*.

SUMMARY OF ARGUMENT

The bank holding company structure has definite advantages to the bank's stockholders over direct ownership. The stockholders can consolidate their control and enjoy tax advantages; the bank can avoid restrictive state branch banking laws and engage in some nonbanking businesses. But those advantages also make the holding company an attractive vehicle for speculation in bank stocks. The tax advantages encourage excessive reliance on debt financing, and the holding company device may lead to a drain on the bank's resources.

Congress has directed the Board to control the formation of bank holding companies. The Board attempts to evaluate the long term potential for harm arising from the creation of the holding company and to discourage speculation in bank stock. Holding companies often are beneficial, but, in order to protect against the risks that holding companies also create, the Board requires the holding company and the subsidiary bank to be soundly capitalized.

The plain language of the Bank Holding Company Act (12 U.S.C. 1842(c)) and its legislative history strongly support the Board's practices. The Act requires the Board "[i]n every case [to consider] the financial and managerial resources and future prospects" of the holding company and the bank concerned in determining whether to approve the creation of a bank holding company. The legislative history of this provision indicates that the Board is to

consider applications to form bank holding companies under the standards that have traditionally been applied by bank supervisory authorities. Those standards typically involve close scrutiny of the adequacy of the capitalization of the supervised banking entity.

The precursor of the provision at issue here explicitly required bank holding companies to maintain prescribed financial reserves as a condition of exercising ownership controls over a subsidiary bank or banks. This express condition was not included in the Bank Holding Company Act only because Congress concluded that it was unnecessary, in light of the power given the Board to assure that holding companies had adequate resources.

There is therefore ample reason to confirm the Board's consistent position that it will not approve the formation of a bank holding company when, because of undercapitalization or any other deficiency, the enterprise would not possess the financial and managerial attributes of a sound institution.

ARGUMENT

THE FEDERAL RESERVE BOARD NEED NOT ALLOW THE CREATION OF FINANCIALLY UNSOUND BANK HOLDING COMPANY SYSTEMS

The issue in this case is whether the Federal Reserve Board may disapprove the formation of financially unsound bank holding companies. The court of appeals here held that the Board must approve the formation of such a company so long as the bank's unhealthy financial condition would not be made *worse* by the formation of the holding company and the

other statutory factors (*e.g.*, competitive effects) are not adverse. We submit that the Board's regulatory authority under the Bank Holding Company Act permits it to disapprove the formation of financially unsound holding companies.

It is undisputed that both respondent and the bank to be acquired in this case were undercapitalized and thus in an unhealthy financial condition. The court acknowledged the presence of the Bank's "low capitalization ratio and the debt of its shareholders" (Pet. App. 11a), the very considerations that led the Board to deny the application. The record in this case amply justifies the Board's concern about the financial strength of the proposed holding company and the Bank. The Chicago Reserve Bank, the Comptroller of the Currency, the Board's staff and the Board itself expressed concern about the weakness of the Bank's capital position, the inadequate capital and excessive debt of the holding company, and the prospect of substantial, ever increasing debt being incurred by respondent's shareholders. See pages 5-10, *supra*. The total debt of the respondent—$3.7 million in existing debt and at least $1.1 million in new obligations represented by capital notes (see pages 7-8, *supra*)—together with the Bank's low capital/asset and invested asset ratios caused the Board's staff to conclude that "Bank's capital is strained by the debt incurred" and to recommend approval of the transaction be withheld on this ground alone (A. 54). The staff also was apprehensive that the Bank's owners would borrow still more money to pay for the additional stock called for in the amended application. In that event, the financial resources available to the enterprise would be further encumbered, and its strength correspondingly reduced. Based primarily on these factors, the Board concluded that the application should be denied.

The court of appeals did not dispute the Board's conclusion regarding the unsound financial situation of the enterprise.[13] It held that this concern is irrelevant and that the Board is required by law to permit the Bank's owners to form a one bank holding company, because to do so would not make the situation any worse than it already is. We submit, to the contrary, that the Act does not require the Board to approve the formation of a bank holding company in circumstances like this.

A. Holding Companies Should Be Financially Sound

The primary motivation for the formation of respondent evidently is to permit the Bank's owners to reduce their taxes (see note 3, *supra*).[14] (Although

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[13] The panel of the court of appeals held that the Board's conclusions concerning the Bank's unsoundness and respondent's excessive debt are supported by substantial evidence (Pet. App. 19a). The *en banc* court did not overturn this finding.

[14] The principal advantage would be to the shareholders whose acquisition debt would be assumed by respondent. If there is no holding company, the Bank will distribute dividends to its shareholders. The shareholders then could use the dividends, after paying taxes on the dividend income, to pay off their acquisition debts. If the holding company is formed, the Bank would pay dividends to the holding company,

the owners proposed an increase in the capitalization of the Bank through the issuance of stock and long term notes, the Board's staff observed that this benefit to the Bank would be nullified over the debt retirement period by the strain on the Bank in servicing the holding company's heavy acquisition debt. But the tax advantages are not the only reason why the formation of a holding company would be attractive to the Bank's owners. A bank holding company may expand into banking-related activities with Board approval (12 U.S.C. 1843(c)(8)). The holding company may avoid the strictures of state laws that restrict branch banking [15] and may acquire funds without regard to the interest ceilings and reserve requirements that apply to banks. In principle,

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which need not pay income tax on them. The tax advantages of this intercorporate dividends exclusion would accrue to the holding company, and thus to the individual shareholders.

The Bank also would receive some benefits. To the extent the holding company would have interest payments exceeding its profits, the surplus interest deductions could be offset against the Bank's earnings to reduce the Bank's taxes. The Bank thus would have additional sums that could either be used to reduce the debt or be retained. The latter course would increase the Bank's net worth and thus increase the value of the shares of the holding company. The former course would yield benefits only for the holding company. The individual shareholders of the holding company therefore would benefit no matter how the tax savings were allocated.

[15] 12 U.S.C. 36(c)(2); *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 379 U.S. 411, 413.

the holding company device also could be used to concentrate control of ownership.[16]

The advantages to the shareholders of the creation of the holding company are thus substantial.[17] But the risks to the public from the abuse of the holding

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[16] The owner of a bank could organize a holding company that would own 50.1 percent of the bank's stock. If the owner then sold the remaining 49.9 percent to the public, and also sold to the public 49 percent of the shares of the holding company, he still would have effective control of the bank. He would have only 26 percent of the equity investment in the bank; yet he would control the holding company, and the holding company would control the bank. (This does not happen in practice, however, because the holding company would lose the tax advantages that are a primary inducement for its existence.)

[17] The significance of these advantages is indicated by both the extensive use of bank holding companies and the Board's ability to obtain substantial commitments as conditions of approving the creation of such holding companies. Banking subsidiaries of holding companies held 66 percent of all commercial deposits in the United States as of December 31, 1976 (Hearings on Federal Bank Commission Act of 1977 before the Senate Committee on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. 66 (1977). The Board frequently approves a holding company's acquisition of a bank only on the condition that the company increase the bank's capital (see, *e.g.*, *Denver U.S. Bancorp. Inc.*, 56 Fed. Res. Bull. 291; *Michigan National Corp.* 58 Fed. Res. Bull. 804). Since 1970 such conditions have added almost $2 billion to the net capital of the nation's banks. See Hearings on Financial Institutions and the Nation's Economy (FINE)—Discussion Principles before the Subcommittee on Financial Institutions Supervision, Regulations and Insurance of the House Committee on Banking, Currency and Housing, 94th Cong., 1st and 2d Sess., Part 3, 2403 (1975-1976). (The concessions the Board requires in exchange for approval are judicially enforceable. 12 U.S.C. 1818(b) and (i).)

company device also may be substantial. The tax advantages to the shareholders make the holding company an attractive vehicle for speculation in bank stocks. A speculator can borrow money to purchase a bank, offering the newly-purchased shares of the bank's stock to secure repayment of the loan. Then, by forming a holding company, he can avoid taxes on the Bank's dividends while using the Bank's earnings to pay off his debt (as the shareholders propose to do here). The process allows tax-free, and practically risk-free, accumulation of wealth. The shares of the holding company increase in value as the acquisition debt is repaid. The owner then can sell the holding company shares, paying taxes on the lower capital gains rate. This not only substantially defers tax payments but also converts ordinary income into capital gain. The greater the acquisition debt, the greater the tax savings will be.

In principle, a person could acquire a bank using none of his own money. The entire acquisition could be financed by the bank's earnings and the federal treasury.[18] But the greater the acquisition debt, the greater the risk to the bank. The creation of the holding company and the transfer to it of the acquisition debt does not increase the bank's equity capital. The size of the debt may lead to unsound banking prac-

[18] The Board disfavors the creation of a bank holding company if the acquisition debt assumed by the holding company exceeds 75 percent of the cost of the bank shares. 12 C.F.R. 265.2(f)(22)(xi). This approach is of doubtful validity under the court of appeals' analysis.

tices (such as making high risk loans) in order to maximize the Bank's earnings to permit rapid retirement of the acquisition debt. The holding company device makes speculation in buying and selling banks more profitable than it would be if the acquisition debt remained in the hands of the individual stockholders, to be paid out of the taxable dividends received from the bank.[19]

The flexibility of the holding company in incurring additional debt offers a further opportunity for speculation. Because the unwary investor or depositor may assume that the bank's assets secure the obligations of the bank holding company, the failure of the holding company to meet its obligations could jeopardize the solvency of an otherwise healthy subsidiary bank.[20]

In sum, although holding companies serve legitimate purposes,[21] the opportunity to form holding

[19] The Board's policies on capital and debt restrain speculation in bank stocks because they notify bank purchasers that, in order to obtain the advantages of bank holding company status, they must demonstrate responsible and sound financial and managerial resources.

[20] This is precisely what happened to the Beverly Hills National Bank. The subsidiary bank itself was solvent and was satisfactorily liquid. But when the parent holding company failed to meet its obligations, there was a "run" on bank deposits. More than $20 million was withdrawn in a few days, and the bank was sold in order to avoid involvency. See *American Banker*, January 2, 1974, p. 1; *id.* at January 25, 1974, p. 1.

[21] In addition to creating the opportunity for ownership diversification discussed above, a financially strong holding

companies is not an unmixed blessing. There is a potential for abuse, which can work to the detriment of the subsidiary bank and its depositors. The Board of Governors therefore seeks to ensure that every holding company is soundly capitalized—and that its subsidiary bank is soundly capitalized. The legitimacy of the Board's concern does not depend, as the court of appeals thought, on whether the formation of a holding company causes the immediate deterioration of the bank's condition. The Board is of course concerned about immediate effects, but its broader policies are based on long-term effects and on possibilities in the run of cases.[22] The Board's policy not only

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company increases the stability of its subsidiary bank. See S. Rep. No. 1095, 84th Cong., 1st Sess. 15 (1955):

> Downstream financing [borrowing by subsidiary from parent] enables the bank holding company to draw on the equity capital of its shareholders and its own operating funds in order to strengthen the financial condition of any one or more of its subsidiaries. In the past, this has operated not only to the advantage of the bank holding company system itself, but also to the advantage of shareholders and depositors of the subsidiary bank so assisted and the public served by the subsidiary bank.

See also Hearings on S. 2577 (Control of Bank Holding Companies) before the Senate Committee on Banking and Currency, 84th Cong., 2d Sess. 53 (1956).

[22] The court of appeals analysis apparently would deny to the Board any authority to disapprove the formation of a holding company with demonstrably inept or corrupt management, if the same persons already managed the bank, because the creation of the holding company would not cause or enhance the undesirable management situation. It seems clear, however, that the Board should not be required to allow

serves to discourage prospective speculative bank acquisitions but also encourages those who control banks to strengthen those institutions so that they may obtain the benefits of holding company status.[23] The Board's approval thus becomes a tool for improving the health of financial institutions, not simply a means for preventing their immediate deterioration.

B. The Statute Authorizes The Board To Deny Holding Company Status To Unsound Ventures

1. Congress has given the Board extensive powers to control the formation and activities of bank holding companies. No bank holding company may be created without the Board's approval (12 U.S.C. 1842 (a)), and the statute prohibits approval if the creation of the holding company would have an anticompetitive effect (12 U.S.C. 1842(c)). In all other circumstances, Congress has vested the Board with substantial discretion to approve or deny an application because of financial considerations. "It was upon the basis of these factors that the Federal Reserve Board is to measure whether each application should be ap-

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corrupt or inept managers to assume control of a bank holding company. The same reasoning applies in undercapitalization cases.

[23] The recurring national concern regarding "problem banks" is reflected in the January 31, 1977, study of the Comptroller General of the United States, *Highlights of a Study of Federal Supervision of State and National Banks.* The Comptroller noted the congressional concern "over large bank failures in recent years" (p. 1) and recommended improvements in bank regulation. See also note 20, *supra.*

proved or denied in the public interest." S. Rep. No. 1095, 84th Cong., 1st Sess. 10 (1955).

The statute provides that, in determining whether to approve the creation of a bank holding company (*ibid.*; emphasis added):

> In every case the Board shall take into consideration the *financial and managerial resources and future prospects* of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Although the court of appeals correctly concluded that this language authorizes the Board "to deny approval of a bank acquisition upon finding it not to be in the public interest for reasons other than an anticompetitive tendency" (Pet. App. 7a; see also S. Rep. No. 1095, 84th Cong., 1st Sess. 10 (1955)), it erred in limiting the Board's consideration of the public interest to the immediate effects of the transfer of bank ownership to the holding company. Nothing in the language or purpose of the statute suggests such a limitation—to the contrary, Congress instructed the Board to consider not only the current financial and managerial resources of both bank and holding company but also their future prospects. Congress thus provided that the Board should consider not only immediate effects but also long range risks.

The court of appeals effectively read the statute as dealing only with the problems caused by holding companies that control more than one bank. When only a single bank is involved, the holding company acquisition would not pose competitive problems, and the

transfer from individual to corporate ownership rarely would cause immediate difficulties for the bank. But the statute is not limited to multiple bank holding companies. In extending the Act to one bank holding companies in 1970 (84 Stat. 1760), and requiring those seeking such status to go through the costly and time consuming application process, Congress could scarcely have intended that the Board would have no discretion to consider the bearing of the "financial and managerial resources of the company * * * and the bank[] concerned [on the] * * * needs of the community to be served." Not only the plain language of the statute but also its specific extension to single bank holding companies demonstrates the court of appeals' error.

2. As this Court explained in *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 379 U.S. 411, 420, the Bank Holding Company Act "was designed to permit an agency, expert in banking matters, to explore and pass on the ramifications of a proposed bank holding company arrangement." This exploration necessarily involves consideration of the financial health not only of the proposed holding company, but also of the subsidiary bank.[24] The Court

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[24] The court of appeals is accordingly incorrect in suggesting that questions of "bank soundness" are "reserved to the Comptroller of the Currency" (Pet. App. 9a). The Board and the Comptroller each must consider the proposal. The Comptroller then advises the Board (12 U.S.C. 1842(b)), but the Board is not required to follow the Comptroller's recommendation. *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, *supra*, 379 U.S. at 417-420. Cf. 12 U.S.C. 78, 248(a), 301, 371b,

therefore concluded in *Whitney* that the Board may disapprove the formation of any holding company system the organization of which would be "beyond the limits consistent with the public interest" (379 U.S. at 421).

The Board's responsibilities include the continuing supervision and regulation of bank holding companies to assure their safe operation according to sound banking practices. 12 U.S.C. 1818(b)(1) *et seq.*; S. Rep. No. 1095, 84th Cong., 1st Sess. 14-15 (1955). The authority to prevent the formation of financially unsound holding companies is a natural and effective part of this supervisory power. The Board's power logically extends to preventing the formation of bank holding companies that are likely to be substandard, as well as to assuring that existing companies comply with established standards. Moreover, it is entirely consistent with the statutory emphasis on the importance of assuring the strength of bank holding companies and their subsidiary banks for the Board to condition the grant of holding company status on the improvement of marginally adequate banks. Even when these deficiencies are not so serious as to require the use of corrective sanctions,[25] the financial

377, 461, 601 (relating to regulation and supervision of national banks by the Board independently of the Comptroller of the Currency).

[25] The Board may issue cease and desist orders to halt unsound practices by bank holding companies. 12 U.S.C. 1818(b). Deficient capitalization would be a sufficient reason to issue such an order. It would be odd if the Board were required to approve the formation of a bank holding company with

health of the banking system is improved when the owners of such institutions are motivated to improve them in order to obtain the benefits of holding company status.

3. The legislative history amply confirms the Board's authority to consider the financial soundness of both the proposed holding company and the subsidiary bank in determining whether to approve the formation of a bank holding company.

The precursor of Section 3(c) of the Bank Holding Company Act was Section 19 of the Banking Act of 1933, 48 Stat. 186. Section 19 was designed to correct "evils which reached a peak of danger in 1929," evils that were characterized by the inflation of bank credit and bank insolvencies. See S. Rep. No. 584, 72d Cong., 1st Sess., Part 1, 2-5 (1932). Because a number of bank holding companies had collapsed in that period, Congress undertook to assure their "financial responsibility" (*Anderson* v. *Abbott*, 321 U.S. 349, 364). Section 19 required a bank holding company to obtain a permit from the Board as a prerequisite to voting a subsidiary bank's shares. The Board was required to consider the financial condition of the bank holding company before granting any permit. And if a holding company obtained a voting permit, it became subject to examination by the Board and was required, *inter alia*, to maintain a

adequate capital but could then immediately order it to provide adequate capital (which it might not be able to do). Surely it is preferable to prevent the formation of unsound enterprises than to attempt to cure unsoundness later.

prescribed reserve of readily marketable assets in order to provide for the replacement of capital and to cover losses in its subsidiary bank or banks. Thus Congress explicitly provided that a bank holding company should serve as a source of financial strength to its subsidiary bank.

After Congress found that bank holding companies were avoiding compliance with the regulatory standards of Section 19 simply by declining to vote the shares of subsidiary national banks,[26] it enacted the Bank Holding Company Act of 1956, 70 Stat. 133. Under Section 3(c) of the 1956 Act the Board was required to consider an application to create a bank holding company on the basis of five enumerated factors: (1) the financial history and condition of the company and banks involved, (2) their prospects, (3) the character of their management, (4) the convenience, needs, and welfare of the communities concerned and (5) the competitive effect of the proposed acquisition.

The present standards in 12 U.S.C. 1842(c) result from the 1966 amendments to the Bank Holding Company Act; they are the same as the 1956 standards in every material way.[27] The 1966 amendments simply repealed the voting permit arrangement (80 Stat. 236) because it "serves no substantial purpose"

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[26] See H.R. Rep. No. 609, 84th Cong., 1st Sess. 4-5 (1955).

[27] The 1970 amendments extended the Act's coverage to one bank holding companies but did not change the list of factors that the Board must consider in making decisions. 84 Stat. 1763.

in view of the authority granted to the Board by Section 3(c) of the Bank Holding Company Act to consider a holding company's financial resources. S. Rep. No. 1179, 89th Cong., 2d Sess. 12 (1966). In other words, Congress repealed the provisions of the Banking Act that required bank holding companies to have prescribed capital only because, in Congress' view, the Board had the authority to enforce a financial resource standard under the Bank Holding Company Act.

The legislative history of the 1956 Act demonstrates that Congress intended the Board to function like any other bank supervisory authority in determining the financial soundness of a banking institution; Congress gave the Board the additional task of considering anticompetitive effects attributable to the creation of a holding company, but that did not make the Board's role as a banking supervisor the less important (S. Rep. No. 1095, 84th Cong., 1st Sess. 10 (1955)). The standards of Section 3(c) were intended to reflect "in general the considerations now specified in the law as the basis for administrative action in connection with the admission of State banks to membership in the Federal Reserve System and the granting of deposit-insurance coverage." H.R. Rep. No. 609, 84th Cong., 1st Sess. 15 (1955).

Careful scrutiny of the financial condition of the banking entity has been a fundamental part of agency review of applications for Federal Reserve System membership and of federal deposit insurance coverage. The agencies administering these programs

clearly have the authority to deny the application solely because of the financial weakness of the applicant.

For example, a state bank seeking admission to the Federal Reserve System must possess "capital stock and surplus which, in the judgment of the Board of Governors of the Federal Reserve System, are adequate in relation to the character and condition of its assets and to its existing and prospective liabilities and other corporate responsibilities * * *" (12 U.S.C. 329).[28] In acting on applications for membership in the Federal Reserve System, the Board must "consider the financial condition of the applying bank, the general character of its management and whether or not the corporate powers exercised are consistent with the purposes of this Act" (12 U.S.C. 322).[29]

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[28] This language dates from the 1952 amendments to the Federal Reserve Act. 66 Stat. 633. Before 1952 Section 9 of the Federal Reserve Act of 1913 had required banks applying for membership to comply with the "reserve and capital requirements" established by the by-laws of the Board and to possess sufficient paid-up and unimpaired capital to entitle the state-chartered bank to become a national bank. 38 Stat. 251. See S. Rep. No. 1623, 82d Cong., 2d Sess. 1 (1952).

[29] Congress decided in 1913 that in acting on membership applications the "greatest care should be exercised with respect to the capital and reserves of applying banks." H.R. Rep. No. 69, 63d Cong., 1st Sess. 42 (1913). The Senate Report on the membership provisions indicates that state banks could become members only when "the capital stock, sound condition, subscription, and compliance with the rules of the system" justify admission. S. Rep. No. 133, 63d Cong., 1st Sess., Part 2, 11 (1913).

Similarly, the factors to be considered in determining whether a bank may be insured under the Federal Deposit Insurance Act, 64 Stat. 873, as amended (12 U.S.C. 1811 *et seq.*) include (12 U.S.C. 1816):

> [T]he financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this chapter.

These factors are derived from Section 101(g) of the Banking Act of 1935, 49 Stat. 688, which identifies them as "those which are considered by the Comptroller of the Currency in authorizing national banks to commence business." S. Rep. No. 1007, 74th Cong., 1st Sess. 3 (1935). The Comptroller's investigation of new bank applications traditionally has included consideration of such matters as the financial soundness of the proposed bank and the "reasonable prospects for success of the new bank if efficiently managed." See Instructions of the Comptroller of the Currency Relative to the Organization and Powers of National Banks, 1920, reprinted at 74 Banking L.J. 925 (1957).

4. We submit, then, that the language of the statute, the process of its evolution, and the accompanying legislative reports all demonstrate that Congress has authorized the Board of Governors to apply the traditional banking regulation standards in deciding whether to approve the formation of a new bank hold-

ing company. If, in the Board's view, the enterprise would be too thinly capitalized, then the Board is entitled to withhold its approval. It need not find that the creation of the holding company will make things immediately worse than they are because, when conditions are shaky to begin with, the very formation of the holding company creates risks that do not exist when the bank operates by itself.

If there is any doubt in this, the doubt should be resolved by reference to the Board's consistent practice—a practice clearly announced and left undisturbed by Congress. "[T]he Board has played a vital role in the development of the national banking laws, a role which makes its views of particular benefit to the courts." *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, *supra*, 379 U.S. at 421. The Board has authority to issue all necessary orders and regulations (12 U.S.C. 1844(b)), and this Court has indicated that these orders and regulations should be sustained unless they are plainly wrong. *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369-374.

The Board has regularly declined to approve the formation of bank holding companies when, because of undercapitalization or any other deficiency, the enterprise would not possess the financial and managerial attributes of a sound banking institution.[30] See, *e.g.*, *Clayton Bancshares Corp.*, 50 Fed. Res. Bull. 1261; *Mid-Continent Bancorp.*, 52 Fed. Res. Bull.

[30] See Heller, *supra*, at 129-138.

198; *Midwest Bancorp.*, 56 Fed. Res. Bull. 948. After Congress extended the Board's regulatory authority in 1970 to supervision of one-bank holding companies, the Board applied this same standard to applications to form one-bank holding companies. See, *e.g.*, *Bankshares of Hawley, Inc.*, 62 Fed. Res. Bull. 610; *Citizens Bancorp.*, 61 Fed. Res. Bull. 806; *Downs Bancshares, Inc.*, 61 Fed. Res. Bull. 673. The Board's interpretation that bank holding companies should be adequately financed and provide strength to their subsidiary banks was well known and consistently applied when Congress extended the Board's authority in 1970. It was referred to by Congress in 1955 (see S. Rep. No. 1095, 84th Cong., 1st Sess. 15 (1955)) and has been discussed by Congress, with apparent approval, quite recently (see S. Rep. No. 95-323, 95th Cong., 1st Sess. 11 (1977)). In these circumstances the presumption is strong that Congress has ratified the Board's view of its authority. See, *e.g.*, *Lorillard* v. *Pons*, No. 76-1346, decided February 22, 1978; *Saxbe* v. *Bustos*, 419 U.S. 65, 74. The Board's "reading and application of the statute involved in this case * * * are long established, have remained undisturbed by Congress, and fall well within that category of situations in which the courts should defer to the agency's understanding of the statute which it administers." *National Labor Relations Board* v. *Enterprise Association*, 429 U.S. 507, 528.[31]

[31] See also, *e.g.*, *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 381; *Udall* v. *Tallman*, 380 U.S. 1, 16. The courts of appeals have regularly given

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

BARBARA ALLEN BABCOCK,
Assistant Attorney General.

HARRIET S. SHAPIRO,
Assistant to the Solicitor General.

RONALD R. GLANCZ,
ROBERT S. GREENSPAN,
Attorneys.

NEAL L. PETERSEN,
General Counsel,

J. VIRGIL MATTINGLY,
Attorney,
Board of Governors of the
Federal Reserve System.

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substantial weight to the Board's interpretation of the statutes it administers. See, *e.g. Association of Bank Travel Agents* v. *Board of Governors*, 568 F.2d 549, 552 (C.A. 7); *Alabama Association of Insurance Agents* v. *Board of Governors*, 533 F.2d 224, 239 (C.A. 5), certiorari denied, February 28, 1978 (No. 77-668). See also *Board of Governors* v. *Agnew*, 329 U.S. 441, 449-450 (Rutledge, J., concurring).

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No. 77-832

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,

Petitioner,

vs.

FIRST LINCOLNWOOD CORPORATION,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE RESPONDENT

GEORGE B. COLLINS
One N. LaSalle Street
Chicago, Illinois 60602
Attorney for the Respondent

COLLINS & AMOS
One N. LaSalle Street
Chicago, Illinois 60602
Of Counsel

Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

TABLE OF CONTENTS

LIST OF AUTHORITIES CITED

Cases

Other Authorities

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October Term, 1977

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FIRST LINCOLNWOOD CORPORATION,

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BRIEF OF THE RESPONDENT

May It Please The Court:

QUESTIONS PRESENTED

We do not agree that the question under review is correctly presented at page 2 of the Petitioner's Brief; we perceive the questions presented to be:

1. Whether the Federal Reserve Board may deny an application to form a new bank holding company except by reason of some effect or result which will arise by reason of the completion of the transaction in question.
2. Whether the Federal Reserve Board has the power under the applicable statute to disapprove the formation of a one bank holding company when the formation of that company will, in no respect, change any of the relevant circumstances of the bank except for the better.
3. Whether the Federal Reserve Board acted arbitrarily and capriciously in denying bank holding company status when the only effect of the formation of the bank holding company will be to allow to the ownership of the bank a certain tax benefit available to substantially all other persons in similar circumstances.

STATEMENT

The Petitioner's Brief describes the transaction by which First Lincolnwood Corporation would seek to become a one bank holding company under 18 USC Sec. 1841, owning the First National Bank of Lincolnwood. It is agreed that "there would be practically no realistic difference in the financial operation of the bank" if owned by the proposed holding company and that operation through a holding company "might be financially sounder." Pet. App. 28a. There is no contention that operation as a holding company would be less sound.

The essentials of the holding company transaction are:

1. The stock, presently held in a voting trust, would be transferred to the one bank holding company, which would then perform the same function as the voting trust; it would hold the stock, and would, as required, vote it for the election of directors. Since the same individuals would be in control after as before, there would be no change in management.
2. The holding company, with personal guaranties, would be liable for debt of $3,697,000. In addition, the principals would raise, and, through the holding company, purchase additional stock of the Bank in the amount of $1,071,875. (App. 35). The debt is not new debt; it was incurred when the individuals bought control of the Bank from a former group which found itself in criminal difficulty. (App. 29) The holding company transaction creates no new debt, and denial of holding company status will not remove debt already incurred.

3. In addition, the Bank itself would increase its capital by the issuance of capital notes, as approved by the Comptroller, in the amount of $1,000,000. (App. 51).
4. The debt assumed would be paid off from the dividends and tax transfer payments allowed by law and approved by the Comptroller. These earnings are considered "sufficient to retire" to "acquisition debt." (App. 32). (Report of FRB Chicago[1]).

The transaction, called a "formal restructuring" in Petitioner's Brief (Pet. Br. 4) would increase the capital accounts of the bank by $2,000,000, and would, prospectively, save the Bank at least $130,000 per year in income taxes.

No adverse factors whatever have been claimed to exist which are caused or brought into being by the transaction itself.

The holding company itself is an Illinois corporation formed for that purpose; it has engaged in no actual business. (App. 30).

The Bank had, at the end of 1974, total assets of $71,000,000, and had "low capital ratios" which reflected "the cumulative effect of many years of litigation fees and substantial loan charge-offs, which reportedly resulted from questionable loans and advances made to certain directors (and their interests) no longer associated with the Bank." (FRB Chicago Report, App. 27). Those are the adverse interests whose shares were purchased with the borrowed money which is now the basis for refusal of holding company status.

The Bank was formed in 1955, in Chicago, and moved to Lincolnwood (a neighboring suburb of Chicago) in

[1] The Federal Reserve Bank of Chicago is referred to in this brief as "FRB Chicago".

1962. It is regularly examined and regulated by the Comptroller of the Currency. (App. 25) 12 USC § 481.

The Bank's loan policy is described as "conservative" (App. 25), and its "overall asset condition appears sound." (App. 26).

Due to the elimination of the former interests the directorate had been recently changed at the time of the application, but "the directorate appear(ed) attentive and active, and their collective efforts are demonstrated in the excellent growth and earnings pattern the Bank is currently experiencing." (App. 29 FRB Chicago Report).

According to FRB Chicago, the present management, through its President, Harold Cohn, "successfully converted Bank's operation from a chronic problem condition to the present favorable posture." (App. 29). As to the quality of management, the Court of Appeals said in the panel opinion (Pet. App. 19a):

> "All parties now agree that the bank's present management . . . is outstanding and has converted the bank to its now favorable condition."

The operation of the Bank through a voting trust is said to have had "a favorable impact on improving Bank's financial condition" (App. 23), and the infusion of new capital from the formation of the one bank holding company would serve the public convenience by increasing the loan limits of the Bank. (App. 33).

Holding company status was first sought with the presentation of a proposed application to FRB Chicago on November 15, 1974. Filing was finally acknowledged June 3, 1975. The Federal Reserve Board of Chicago and the Comptroller of the Currency approved by September 26, 1975. Denial came on January 9, 1976, and these proceedings followed. (12 USC § 1848). The tax savings

lost to the Bank since filing are approximately $426,240,[2] and continue.

The holding company did not propose to engage in any business which required Board approval (App. 15), or in any non-banking activities of any kind. (App. 15). Illinois forbids branch banking in every form, as well as multi-bank holding companies, and this one bank holding company will be bound by Illinois law. Ill. Const. 970, Art. 13, Sec. 8; Ill. Rev. Stats. Ch. 16½, § 106; 12 USC § 36.

The Seventh Circuit's affirmance of the Board was by a divided panel. (Pet. App. 15a). On rehearing, with seven judges participating, the Court unanimously reversed the Board, holding that the Board should not deny holding company status when the "condition or tendency deemed not to be in the public interest" will not be caused or enhanced by the proposed transaction. (Pet. App. 7a).

[2] This figure is calculated as follows: Interest on $3,700,000 at 8% per annum is $296,000. The Bank earns more than the minimal amount, and pays a 48% tax. This indicates an annual tax on this fund of $142,080 (.48 x 296,000). It has been three years. (3 x 142,080 = $426,240), and this footnote is written on the third anniversary of the application. The legal basis for the tax savings is as described at Pet. Br. p. 5, note 3, and the tax effect of the proposed transaction is not in dispute. The $130,000 figure used in the briefs below as the annual tax saving was based on the lower interest rate then prevailing.

SUMMARY OF ARGUMENT

The summary of argument in the Petitioner's Brief presumes that this bank holding company exists in a state which allows branch banking, chain banking, and the conduct of non-banking business by a holding company.

None of those factors apply to this case; the principal purpose of this bank holding company is to file a consolidated tax return, so that the Bank may remain an independent local entity. Any other business would be entirely at the discretion of the Board. And, no Illinois holding company may own more than one bank, and that bank may have no more than one banking house; this transaction cannot be the prelude to any form of "branch" type banking.

The legislative history of bank holding company regulation says that the purpose was, first, to avoid undue concentrations of power through the use of the bank holding company mechanism to achieve the equivalent of unregulated branch banking, and, second, to avoid the mixture of banking business with business unrelated to banking. The regulation of bank holding companies by the Federal Reserve Board, like the regulation of bank mergers, is designed to preserve competition and avoid the use of deposit funds as a competitive tool in the conduct of non-banking enterprises.

The statute itself, (Pet. Br. p. 2) 12 USC § 1842, is plain; in subsection (c), there are two enumerated factors to be considered, drawn without substantive change from the Bank Merger Act; the two factors pose the inquiries which the Board must make; without satisfactory answers to both, then the statute commands that the "Board shall not approve." In making this decision—an anti-trust decision tempered by community

needs—the "financial and managerial" resources are to be considered—as set forth in the last paragraph of subsection (c). But, the decision remains an anti-trust decision, with considerations in favor of the proposed transaction not made in cases under the Sherman and Clayton Acts because of the basic differences between banking and commerce. (15 USC § 2; § 17 et seq.).

The decision of the Board, under any standard, was arbitrary and capricious. The effect of the transaction is that nothing changes except that the ownership of the Bank will be more likely to pay off the debt against the ownership more promptly if the transaction is made than if the transaction is not made. The transaction makes no change at all in any legal relationship that affects either the banking community or business in Lincolnwood, Illinois. It is an arbitrary act to deny a valuable status where the granting of that status would do no harm to anyone.

The Federal Reserve Board should not use its authority to grant or withhold holding company status as an instrument of money policy, and should not use it to reward or deny reward for obedience to capital requirements for one bank holding companies found no place in the law. These Respondents, as all others, are entitled to some reasonable certainty in the law, and should not be denied holding company status because, as a part of its overall regulatory authority, the Federal Reserve Board deems it unwise to allow a bank holding company on a particular date. This is not an appropriate case in which the Federal Reserve Board should use its unreviewable money policy discretion; it is a case in which the Board should be held to an ascertainable legal standard; such a standard was found and applied by the Court below, and should be confirmed here.

We contend that the decision below is right, and that the result is right, and that the Respondent should be allowed to proceed with its holding company transaction.

ARGUMENT

I.

THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IS RIGHT.

We submit that the decision below is well reasoned, correct and that the best argument in support of the decision is the opinion itself. The Board should not be allowed to disapprove the formation of a one bank holding company when it cannot demonstrate any difference at all in the banking situation, in the public convenience or in the competitive factors before or after the formation of the holding company.[3]

Counsel for the Board conceded below that the formation of this holding company would make no difference; his words were paraphrased by Judge Fairchild (Pet. App. 28a):

> "On oral argument, counsel for the Board twice admitted that there would be practically no realistic difference in the financial operation of the bank whether it was owned by private individuals or allowed to operate through a bank holding company. Indeed, counsel went on to concede that operation under a bank holding company might be financially sounder in the instant case as a result of approximately $130,000 in annual tax savings that would be possible because of the opportunity to file a consolidated tax return."

[3] One bank holding companies, as opposed to the multi-bank holding companies found in States allowing branch banking, have been commonly "organized by families or individuals to control small banks while at the same time gaining certain tax advantages offered by incorporation." Economic Perspectives, March-April 1977; "Non Banking Activities of Bank Holding Companies" (Published by FRB Chicago). The Board has claimed that it exercises its discretion in favor of one bank holding companies designed to preserve a continuity of good management, to help maintain the independence of small, community banks. *Central States Bancorp*, 39 Fed. Reg. 31,952.

As against this concession, the Board now seeks reversal because it says that it "need not allow the creation of financially unsound bank holding company systems." (Pet. Br. p. 13).[4] Its actual position, as stated to the Seventh Circuit, is that it has the right to disapprove any transaction if it chooses to do so, being obliged only to characterize its action as in the "public interest." This is the only standard which, by regulation, the Board has accepted. 12 CFR 262.3(d).[5]

To attack the opinion below, the Board goes far beyond the facts of this case, ignores the approval of the transaction by the staff of the Federal Reserve Bank of Chicago (App. 21), and argues that the opinion below will result in terrible consequences. We contend that this case should be judged on this record, and not on the basis of "future horribles" such as were rejected as the basis of decision by the trial judge in *U.S. v. First National Bancorporation*, 329 F. Supp. 1003, 1016 (D. Colo.), affirmed (by an evenly divided court), 410 U.S. 577. And, it is plain, as identical language in the Bank Merger Act was applied in *U.S. v. Third National Bank*, 390 U.S. 171, 190, that the statutory words referring to "financial and managerial resources" [18 USC 1842(c)] are to be applied as they relate to a particular transaction, and not to some abstract concern for what might

[4] This case does not involve a "financially unsound bank holding company system;" the Board's brief overlooks the emphatic findings of good management at the bank, and the report of FRB Chicago that this holding company plan would improve capital retention and benefit the Bank. App. 21, 23, 30. The Board also ignores the Comptroller's approval, and the lack of any other objection. See App. 51. The Board's adverse finding is undercut by the views of the two Federal agencies best able to consider the prospects of success of the proposed holding company.

[5] "The Board takes such action as it deems appropriate in the public interest." 12 CFR 262.3(d).

occur at some other time under some other circumstances.

We emphasize that the FRB Chicago report says that "The holding company structure will enhance bank's prospects for capital retention." (App. 23). This transaction takes united control ownership of a bank, now exercised through a voting trust (App. 58) and allows those same functions to be performed through a holding company. There is no real change by reason of the transaction, except for the better.

Against this simple transaction, the Board raises these "future horribles," which we answer:

1. That there would be a "strain on the Bank in servicing the holding company's heavy acquisition debt." This is a "straw" argument; the Bank does not owe the debts of the holding company and does not assume those debts by this transaction. As a regulated entity, the Bank must have a dividend policy consistent with the statute, 12 USC 60, and, under some circumstances, may only pay a dividend with the approval of the Comptroller of the Currency. 12 USC Sec. 60(b). No other "strain" exists, and the FRB Chicago report contradicts the Board's unsupported finding by noting that the formation of the holding company will "enhance capital retention." (App. 23).[6] Further, the individual owners must, as a matter of simple mathematics, be under far greater pressure to declare dividends without a holding company than with a holding company.

[6] The Board claims that a holding company should be a source of strength for its bank. This is not the effect of holding company affiliation, and is not even a rational goal; it is so revealed in a study entitled "Effects of Holding Company Affiliation on De Novo Banks" published in "Business Conditions," July 1976, by FRB Chicago, p. 15. The economic benefits of bank holding companies studied in Staff Economic

(Footnote continued on following page)

The transfers of a tax equivalent sum would be effected under 26 USC 1501 and 26 CRF 1.502-14(a)(1) (1976), and would be in the amount of the tax savings realized by the Bank as a result of the filing of a consolidated tax return with the holding company. The only "strain" from that transfer would be the "strain" of disbursing a sum equal to what would have been disbursed as taxes. And, if such a transfer were not made to the holding company, the savings to the Bank would increase capital. In no respect would the Bank suffer any financial injury.

2. "A bank holding company may expand into banking related activities with Board approval." (Pet. Br. p. 16). This is true; but if the Board is concerned about "other activities," then the Board may deny permission for "other activities" if that permission is sought. And, the application itself says that the Bank "does not anticipate at this time engaging in any non-banking activity that requires separate Board approval." (App. 15).

3. "The holding company may avoid the strictures of state laws that restrict branch banking." (Pet. Br. 16). Illinois Law (Ill. Rev. Stat. Ch. 16½, § 106) forbids any form of branch or chain banking, or the ownership of more than one bank by a holding company. Ill. Rev. Stat. Ch. 16½, § 72-74. There is no possibility that the Bank will use the holding company device to avoid Illinois law—there are no branch banks in Illinois, and no holding companies with more

[6] *continued*
Study 84. "The Performance of Individual Bank Holding Companies," Arthur G. Fraas; found at the Library of FRB Chicago. See also: Staff Economic Study 90. No statute has been passed by Congress making any requirement that the bank holding company be a "source of strength" to the Bank, and there has not been any requirement that any individual owner of bank stock be a "source of strength" since the termination of the disastrous double liability statutes. See 12 USC § 64a.

than one bank. The Comptroller is forbidden to allow a branch. 12 USC § 36. This objection simply has no merit.

4. The holding company "may acquire funds without regard to the interest ceilings and reserve requirements that apply to banks." (Pet. Br. 16). The issuance of securities by the holding company will be subject to the securities laws of Illinois, and, in all probability, the United States. And, the holding company, after formation, is a regulated entity. The legal protections to the public from misuse of the holding company for the sale of securities is substantial, and the penalties for such abuse are severe. There is no reason to presume that these owners, who are praised by FRB Chicago for their management of the Bank, will become dishonest when the holding company is formed. (See App. 29, 30).

5. "[T]he holding company device . . . could be used to concentrate control of ownership." (Pet. Br. 17). The Board explains how this could occur in footnote 16, p. 17, of its Brief. Essentially, this could be achieved only by forfeiting the tax benefit which is the primary reason for the transaction, and reducing holding company ownership below 80 percent, thus losing the right to file a consolidated tax return. This would defeat the purpose of the transaction, and is most unlikely to occur.

6. "[T]o discourage speculation in bank stocks" (Pet. Br. p. 12). With a holding company owned by four people owning 80 percent of the shares of a small bank—which it must continue to hold to comply with the requirements for filing a consolidated tax return—there is no chance at all that this particular holding company will be "an attractive vehicle for speculation in bank stocks", (Pet. Br. p. 12), or that it will engage in "speculation". The individuals are engaged for

the long term in the ownership of this Bank, and the purpose of the holding company is to protect that ownership.

7. "[T]he holding company device may lead to a drain on the bank's resources." The direct regulation of the bank, as to dividends, and in every other respect, by the Comptroller puts aside this objection. See 12 USC §§ 26, 27, 57, and 60. The Federal Reserve Board has expressly abjured the direct regulation of banks held by holding companies. 1970, U.S. Code Cong. & Adm. News, p. 5548 (Statement of Chairman Burns). The Federal Reserve Board has fully ceded the examination of national banks to the Comptroller. 63rd Annual Report, Federal Reserve Board, p. 412 (1976). The "drain," if any, is the concern of the Comptroller; his plenary supervisory powers will protect the Bank.

The Board should not, under the existing statute, be accorded power beyond a consideration of the transaction in question, and the effects of that transaction, and then its power should extend only to the limits of the statute. 12 USC 1842. We contend that this statute (Pet. Br. pp. 2-3) does not authorize a denial of the substantial tax benefits of holding company status where no possible harm can be mentioned or even claimed by the Board either to the public or to the entities involved. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

We add that the statute (12 USC 1842) does not describe what shall be required of the capital structure of a bank holding company. In the case of a bank, there is a precise description of the capital requirements for commencement, 12 USC § 51, and the Comptroller of the Currency is given precise regulatory power. See: 12 USC § 36. there should be no reason to presume some

grant of power where it is not specifically given as to the holding company, and when the power to regulate the capital requirements in banks is so specifically given. Nothing in the legislative history indicates a Congressional intent to specify the amount of capital required to be a bank holding company, and the Federal Reserve Board has passed no regulation making any discernable capital requirement.

We submit that the attack on the opinion below is based on illusory hypotheses, and that the opinion is correct, and should stand.

II.

THE LEGISLATIVE HISTORY SUPPORTS THE DECISION BELOW.

The legislative history, outlined in the opinion below (Pet. App. 6a, *et seq.*), demonstrates that bank holding company legislation was initially passed and then amended for two purposes:

1. To apply anti-trust standards to the expansion of multi-bank holding companies, and
2. To terminate the entry of both one-bank and multi-bank holding companies into businesses not related to banking. It was, and remains, the intent to avoid the creation of the "zaibatsu" style of banking-industrial combination that exists in certain other countries,[7] and to preserve the "traditional separation of banking and commerce." 1970, U.S. Code Cong. & Adm. News, p. 5549 (Statement of Chairman Burns).

The Bank Holding Company Act of 1956 came to be as the result of intensive lobbying on behalf of the Independent Bankers Association. 101 Cong. Rec. 8020. A prin-

[7] See: *Non Banking Activities of Bank Holding Companies*, Economic Perspectives (a publication of FRB Chicago), March-April 1977, p. 13.

cipal sponsor of the bill, (Congressman Spence) in his presentation of it, argued:

> "If you concentrate money and credit in the same hands, you have an impregnable monopoly. That is the effect of the holding companies today. Just imagine what chance you would have if you were a small businessman in a community where the holding company controlled the bank and also a competing business. There is no doubt about what would be your ultimate fate. We think that the holding companies are a dangerous thing to our economy, that the centralized concentration of economic power is just as dangerous as the concentration of political power."

Describing bank holding companies, Mr. Spence also said:

> ". . . through the bank holding company device the banks are really not only in the business of banking but they not only own the stock of but absolutely control unrelated businesses. In that way they are given a very great advantage over independent banks." (101 Cong. Rec. 8021).

Congressman O'Hara of Illinois said that "banks should stick exclusively to banking and should be as free from non-banking interests as Caesar's wife from suspicion." 101 Cong. Rec. 8032. The Honorable Wright Patman put the thought into a rhetorical question: "Mr. Holding Company Man, do you want to be in the race track business, the insurance business, or the theater business, or do you want to be in the banking business." (101 Cong. Rec. 8029).

The Independent Bankers of America were, then, concerned about the rapid growth of bank holding companies acquiring small banks in small towns, forcing them into competitive situations threatening their survival, with the resulting flow of money into the money centers and the loss of credit facilities formerly

available to farmers and small town businesses. Other small business organizations supported the Bill; such as the National Retail Hardware Association (101 Cong. Rec. 8023). As the brief of the Amicus Curiae filed in this cause by the Independent Bankers Association demonstrates, the Board has not followed the principles by which Congress sought to guide it in providing for the regulation of bank holding companies.

The Federal Reserve Board, at the time, "advocated that the law be extended even to one bank holding companies because 'the potential abuses resulting from combination under single control of both banking and non-banking interest could easily exist in a case in which only one bank is involved.' " (101 Cong. Rec. 8024).

The Senate Report (1956 U.S. Code Cong. & Adm. News 2482-2483, Pet. App. 3a), recited the problems as largely "The unrestricted ability of a bank holding company to add to the number of its banking units . . . and 'the combination under single control of both banking and non-banking enterprises, permitting departure from the principle that banking institutions should not engage in business wholly unrelated to banking.' "

This basic, two-fold, purpose of holding company regulation has never changed. It provides a standard which is "present and declared." *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); See *Panama Refining Co. v. Ryan*, 293 US 288. Nothing in this standard requires, or even permits, the disapproval of a transaction designed only to preserve the control position of honest and competent management in a small independent one-office bank.

In the early sixties the Bank Merger Act, which also involved certain anti-trust considerations, was held by this Court to forbid, absolutely, any merger which had an anti-competitive effect. *U.S. v. Philadelphia Nat'l. Bank*, 374 US 321. This ruling apparently displeased Congress.

As a result, in 1966 both the Bank Merger Act (12 USC 1828) and the Bank Holding Company Act (12 USC 1841, 1842) were amended to provide, in the same language, derived from the Sherman and Clayton Acts, for the consideration of mergers and holding company acquisitions. Both statutes also provide, in the unnumbered paragraph at the end of the section, that the authority making the decision on the anti-trust considerations "shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served." (Pet. Br. p. 3). The Sherman and Clayton Acts language was used to make applicable the existing case law on those Acts, 112 Cong. Rec. 2444, and the other language was added to allow mergers or holding company transactions that would otherwise fail because of some anti-competitive effect, if the banking factors or community factors could be held to outweigh the anti-trust factors. *U.S. v. Third National Bank*, 390 US 171. The purpose of the new statute was to create a defense for mergers, not to create a new way to attack them.

In the *Third National* case this Court considered the "financial and managerial" language of the Bank Merger Act as providing a possible defense for an anti-competitive merger; the language was considered as applicable only to the particular case at hand, and as relevant only in the consideration of the two primary factors found in the statute. See 18 USC 1828(c)(5) and

12 USC 1842(c)(1) and (2). The purpose of the statute was, and remains, to avoid undue concentration of power by monopolistic or anti-competitive acts, and to prevent the use of banking power in non-banking business, but a limited defense is provided. *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

We submit that the Board errs in this case by considering the unnumbered subparagraph of 1842(c) as providing for it a separate head of jurisdiction, unrelated to the first two considerations set forth in the statute, and unrelated to any specific adverse factor arising from the completion of a proposed holding company transaction.

We also submit that financial and managerial resources are entirely relevant and material to the consideration of the Sherman and Clayton Act factors found in 12 USC 1842(c)(1) and (2). Obviously, a very weak bank with poor resources, badly located, will not be of any competitive danger to any other bank. In every case in which competitive anti-trust considerations have arisen, the capacity of the entities to compete has been precisely considered. *U.S. v. Third National Bank*, 390 US 171; *U.S. v. First National BanCorporation*, 329 F. Supp. 1003 (D.C. Col. 1971), aff'd. 410 U.S. 577; See *Cameron Financial Corp. v. Board of Governors*, 497 F.2d 841 (4th Cir. 1974), at p. 845.

The Seventh Circuit, in the opinion below, read the 1966 language, now before the Court, to have the same meaning as the very different language in the 1956 statute. [1956] U.S. Code Cong. & Adm. News, 169, 171. Pet. App. 62. There is legislative history indicating that the Board should, in granting a holding company application, consider the financial standing of the holding company. S. Rep. No. 1179, 89th Congress, Second Session, p. 12 (1966). However, that language is

as consistent with the consideration of financial factors as related to competitive and community service matters as it is with a review of financial factors apart from competitive matters.

Further, the financial factors considered are still those of the precise transaction itself; the possibility of abuses, as described in Petitioner's brief at pages 15 and 16, which are not germane to the transaction in question, were certainly not enumerated as a basis for a refusal of holding company status. The decision on the formation of a holding company is judicial, and not economic, and should be made on the facts applicable to the particular transaction, and the harm or good done by that particular transaction.

And, "it is only the words of the bill which have Presidential approval . . . it is not to be supposed that in signing a bill, the President endorses the whole Congressional Record." *Schwegman Bros. v. Calvert Distilling Co.*, 341 U.S. 384, 396. As Mr. Justice Frankfurter observed, 47 Columbia Law Rev., 527 at p. 543 (1947):

> "Spurious use of legislative history must not swallow the legislation so as to give point to the quip that only when legislative history is doubtful do you go to the statute. While courts are no longer confined to the language, they are still confined by it."

The Bank Holding Company Act was, most plainly, passed, amended, and then applied to one bank holding companies to avoid "concentrating the commercial bank facilities in a particular area under a central control" and to avoid a "combination, again under single control of banking and non-banking enterprises." (1970) U.S. Code Cong. & Adm. News, 5520. The reasons are plain, and often repeated. (Ibid. 5521). In none of the

legislative history is there any specified intent to convey to the Board any power to deny holding company status which is intended to be and is an intelligent and useful business step in the logical development of a banking picture, in the absence of some adverse competitive factor, factor relating to the control of non-banking entities by the holding company, or some factor of harm which arises from the transaction itself.

The legislative history of the Bank Merger Act is similar; the "primary emphasis" is to the "competitive factor." 112 Cong. Rec. 2441 (2/8/66).

We do, accordingly, contend that the Board has no authority to deny bank holding company status in the absence of some anti-competitive or anti-cartel consideration, or for any reason not precisely related to and caused by the proposed transaction itself. *Western Bancshares v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

We do not suggest that bank mergers—or the formation of holding companies—should be altogether without financial supervision. That is plainly supplied by the Comptroller of Currency, in the case of national banks, and by the State supervisory authorities in the case of state banks. The Federal Deposit Insurance Corporation is also involved.

This is illustrated by the way in which bank holding company cases come before the Courts of Appeal. If the Comptroller says "no", the applicant has the right to an evidentiary hearing. 12 USC 1842(b). But if the Comptroller says "yes," then the holding company applicant has no right to an evidentiary hearing, and the case is decided on the documents. This is because, as it was then conceived, there could be no objection on banking questions if the direct supervisor said "yes." It was not

contemplated that the Board would have banking objections—only that it would have the anti-trust and cartel type objections in which its economic expertise is appropriately respected.

III.

THE DECISION OF THE BOARD WAS ARBITRARY AND CAPRICIOUS.

The Board denied holding company status in this case, against the approval of the direct regulatory authority who examines the Bank (App. 51), and against the recommendation of the Federal Reserve Bank of Chicago, which made an exhaustive and favorable report considering every factor. (App. 19). This decision was made without any facts other than those in the application and in the report of FRB Chicago.

The Board was concerned about what it called "acquisition debt." (Pet.App. 25a).

The FRB Chicago report recognized that "[T]he current debt position of the principals is directly tied to the acquisition of additional control of Bank, and at the same time exercising this control to improve its daily operation and general condition. We believe this control is fundamental to the current well being of Bank, thus, it seems inappropriate to penalize the principals for their accomplishment using debt, by denying their plans for reorganization when their past actions generally support approval of the proposal. The holding company structure will enhance Bank's prospects for capital retention." (App. 23).

Management is outstanding, as the Board agrees, and has guided the Bank to "its now favorable condition." (Pet. App. 19a).

And, when the question of whether or not the hope of holding company status was a factor in the individuals buying out the tainted group, FRB Chicago noted that "Considering that principals of Applicant (First Lincolnwood) were attempting to acquire control from the Projansky group, which had been responsible for the Bank's earlier problems, we would not consider it unusual that some encouragement may have been offered; nevertheless, we feel certain that no firm commitments would have been made." (App. 36). Plainly, the buy-out of the tainted interests was made with at least a rational hope that the way to repayment would be eased by the allowance of holding company status. It was surely hoped that any rejection would, at least, have a basis in the transaction itself.

Under these circumstances, and upon these facts, a holding company transaction's having none of the potentials for harm mentioned in the Board's brief, and having no effect whatever on any community consideration or financial situation, except the enhancement of the Bank's capital, should have been allowed; to deny it is arbitrary and capricious, because it has no rationally discernable reason. 5 USC 706(2)(A). See *First National Bank of Catawba County v. Wachovia Bank & Trust Co.*, 448 F.2d 637 (4th Cir. 1971); *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

We add that the Board's own precedents would appear to require approval of this application. The Board said, in *Central States Bancorp., Inc.*, 39 Fed. Reg. 31952, that

> "The Board has been relatively liberal in the standards it has applied in cases where a current or prospective owner-chief executive is establishing, or has established, a one bank holding company to hold the direct equity interest in his bank. Such relative liberality is regarded as in the public interest in order to facilitate management succession

on the community level at the nation's many smaller independent banks."

Such holding companies often have acquisition debt, and often pay that debt from the dividends and tax transfer payments allowed by law. *Commercial Bank & Investment Co.*, 39 Fed. Reg. 31953; *Drummond Bancshares*, 39 Fed. Reg. 36063.

The effect of the allowance of holding company status is to transform the ownership of the Bank from a voting trust, against which there is debt, from which, presumably, there flows pressure for dividends, to a holding company, which will have a greater ability to pay that debt from the dividends as are now available to the holding company.

The Board argues that the Bank is better off if owned by tax-pressed individuals rather than by a relatively tax free holding company enjoying an enhanced ability to repay debt. Such a decision is so far from logic as, we submit, to be considered arbitrary and capricious. And, the Board is acting out its economic policies, we contend, and not deciding the case on the basis of the record in the case itself.

There is nothing in the statute which says that the Board may specify capital requirements for a holding company. Congress should not be held to have required that which it did not require, and the assumption of administrative authority to make requirements that are not part of the statute should not be allowed. See: *NLRB v. The Boeing Co.*, 412 US 67, 72, 73. Powers in the Board should not be presumed, and it is the decision of this Court, and not of the Board, whether or not the Board's interpretation of its statutory authority is correct. *Volkswagenwerk v. Federal Maritime Commission*, 390 U.S. 261, 272. We submit that this decision

is plainly reversible as beyond the scope of the Board's power, under 5 USC 706(2)(C), and that the result below is correct.

IV.

THE FORMATION OF A HOLDING COMPANY IS DIFFERENT FROM THE FORMATION OF A BANK.

A commercial bank is an entity that receives deposits; the public must trust it, it must be insured, it will be closely regulated, and it has a defined capital structure. See, e.g., 12 USC 1816. In a "decentralized system of community banks"[8] it is essential that a proposition to form a new bank be analyzed for the probabilities of success, lest the public and the FDIC be induced to place reliance in a venture that must fail. The authorities cited at pages 28 and 29 of Petitioner's Brief demonstrate this point. But, a bank holding company, especially a one-bank holding company such as is involved in this case, is entirely different. Its entire business future is based on the success of the Bank, which was authorized to open its office in 1955, and its resulting ability to repay its debt, which was created five years ago.

We do not propose the formation of a new bank to receive the deposits of the public, and the compelling reasons for examination of the probabilities of the success of such an entity do not exist in this case.

We do propose to transfer ownership of an old bank from unregulated ownership through a voting trust to regulated ownership through a bank holding company. See 12 USC § 1818(3). The various statutes dealing with the requirements for opening a new bank plainly refer to something entirely different from this transaction,

[8] *U.S. v. Philadelphia National Bank*, 374 U.S. 321, 325.

and the Board should not rely on those statues as authority for its actions here. The holding company will not receive deposits; it will not make loans; it will not be insured by the FDIC, and it will do no more than the voting trust does now; vote the stock entrusted to it at the annual meeting of the Bank.

To the extent that it may raise money by the sale of debentures, if that should occur, it must comply with the Securities laws of the State and the United States; that in itself is a formidable regulation.

The Board's argument that, because certain matters must be considered in the formation of a bank, those same matters must be considered in the formation of a one-bank holding company is plainly not based upon the realities of the case. The *ownership* of the entity is different from the entity itself, and should be so recognized in any analysis of the facts.

The Board says that if, in its view "the enterprise would be too thinly capitalized" that it is entitled to withhold approval; it has no standards for "thinly capitalized," and does not claim that there are any such standards anywhere. And, it argues from statutory precedent regulating the formation of deposit receiving entities. The distinction is plain.

The Board argues, from *Anderson v. Abbott*, 321 U.S. 349, (Pet. Br. p. 25) that it has the right to claim that a one bank holding company should be so capitalized as to be a source of strength to its bank. The *Anderson* case was decided under the one-hundred per cent liability assessment statute, which permitted the receiver of an insolvent bank to sue the shareholders for the par value of their stock. See 12 USC 64. That statute has been supplanted by 12 USC 64a, and the law applied in the *Anderson* case is no longer the law. By specific enact-

ment of Congress the shareholders of a national bank are no longer statutorily obligated to be a source of strength to the bank, and no such requirement should be presumed.

We do agree that the Board interprets the statute to favor its own position, as it argues. But, it has been reversed before when its own interpretation contradicted a judicial view of its statutory definitions. See *Patagonia Corp. v. Board of Governors*, 517 F.2d 803 (9th Cir. 1975). We contend that its interpretation of its powers here is too generous to its own position, and is surely not binding upon the Court. It was properly limited in the opinion of Judge Fairchild and the other members of the Court of Appeals.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

GEORGE B. COLLINS
One N. LaSalle Street
Chicago, Illinois 60602
Attorney for the Respondent

COLLINS & AMOS
One N. LaSalle Street
Chicago, Illinois 60602
Of Counsel

No. 77-832

In the Supreme Court of the United States

OCTOBER TERM, 1978

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, PETITIONER

v.

FIRST LINCOLNWOOD CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

WADE H. McCREE, JR.
Solicitor General

STEPHEN M. SHAPIRO
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530

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1. Respondent's principal argument is that approval of its application "would do no harm to anyone" and that "the decision below [therefore] is right" (Br. 8) in setting aside the Board's denial. Respondent misses, we think, the central point of our argument—that the Board's authority to deny applications that fail to make provision for adequate capitalization of the holding company and the proposed subsidiary bank is a safeguard against injury to the nation's banking system. The Board has consistently used its statutory authority to require applicants to establish financial responsibility, including the provision of capital to their subsidiaries (Pet. Br. 17 n.17). By so exercising that authority, the Board has helped to create a pool of capital that constitutes a vital margin of safety in the national banking system and provides protection against bank failures. If the Board may not with-

hold approval even when "the financial * * * resources * * * of the company or companies and the banks concerned" (12 U.S.C. 1842(c)) are seriously inadequate, it will be hindered in the performance of this important function.[1] It should not be necessary for the Board to find that the condition of an undercapitalized subsidiary would be caused or worsened as an immediate and necessary result of the formation of the holding company.[2]

2. Respondent argues, however, that "formation of a holding company is different from the formation of a

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[1]Following the financial panic of 1907, Congress enacted the Federal Reserve Act of 1913, ch. 6, 38 Stat. 251. It recognized that prevention of future bank failures would depend on "a suitable banking capital as a margin of safety." S. Rep. No. 133, 63d Cong., 1st Sess. 7-8 (1913). In 1933 Congress enacted the Glass-Steagall Act, ch. 89, 48 Stat. 162, again stressing that bank failures could be prevented by "strengthening of the capital of banks" and "closer and stronger supervision." S. Rep. No. 584, 72d Cong., 1st Sess. 11 (1932). Section 19 of the Glass-Steagall Act required bank holding companies to provide reserves of "free assets" as a capital cushion for their subsidiaries and conferred supervisory authority on the Board. S. Rep. No. 584, *supra*, at 10; 48 Stat. 186-187. Section 19 is the progenitor of 12 U.S.C. 1842(c) (see Pet. Br. 25-27).

[2]Here, of course, the Board did consider "the future prospects" of the proposed holding company and subsidiary bank pursuant to 12 U.S.C. 1842(c). The Board concluded that formation of the holding company "could result in the weakening of Bank's overall financial condition" (Pet. App. 26a). That conclusion was based on the Board staff's projection of the Bank's future earnings and the holding company's debt service obligations under the financing plan (including a proposed offering of debt securities and stock) described in the application. The Board's staff concluded that the Bank's capital/asset ratio was likely to decline from 5.2 to 4.8% during the debt amortization period (A. 54). Recent studies have also stressed the substantial "affiliation risks" to which subsidiary banks may be exposed by highly leveraged parent companies. See J. Rose, *The Effect of the Bank Holding Company Movement on Bank Safety and Soundness: A Literature Review* 25-32 (Board Staff Study, April 12, 1978); M. Jessee and S. Seelig, *Bank Holding Companies and the Public Interest* 151-156 (1977) (see Pet. Br. 19).

bank," and that, although strict financial scrutiny may be appropriate when a bank receives FDIC insurance or admission into the federal reserve system, such scrutiny is not appropriate when the Board considers a holding company application (Br. 25-26). But 12 U.S.C. 1842(c), by its terms, makes the Board's consideration of a bank holding company application the occasion for examination of the financial condition of both the proposed parent and subsidiary. The Board must examine the same financial factors "now specified in the law as the basis for administrative action in connection with the admission of State banks to membership in the Federal Reserve System and the granting of deposit-insurance coverage" (H.R. Rep. No. 609, 84th Cong., 1st Sess. 15 (1955)), including the adequacy of capital and surplus relative to assets and liabilities (12 U.S.C. 329) and general financial soundness (12 U.S.C. 1816).[3]

Respondent fails to recognize that banking institutions are subject to multiple regulatory controls aimed at assuring financial soundness.[4] See *United States* v.

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[3]The capital ratios applied in this case (A. 52-54) compared the bank's capital cushion to its assets (which are subject to shrinkage) and its liabilities (which may become payable on short notice). See T. Herrick, *Bank Analyst's Handbook* 197-216 (1978). These ratios assess the adequacy of the capital of the bank viewed as a going concern and are different from the standards governing the amount of paid-in capital required to commence business (12 U.S.C. 51) and the standards limiting sources of cash dividends (12 U.S.C. 60). Respondent's assertion that the Board's scrutiny of capital structure is inconsistent with the Comptroller's supervision of initial paid-in capital and dividends (Br. 11, 14, 21) is therefore incorrect.

[4]See *Fahey* v. *Mallonee*, 332 U.S. 245, 250 (1947): "Banking is one of the longest regulated and most closely supervised of public callings." It is understandable that respondent is anxious to receive the tax advantage that would result from the formation of a holding company. But the holding company would control a national bank and member of the federal reserve system, and the Board properly

Philadelphia Nat. Bank, 374 U.S. 321, 328-330 (1963), emphasizing that Congress prescribed an overlapping network of such provisions to ensure that the bank regulators have ample power to safeguard the banking system. By making full use of each opportunity for supervision, the bank regulators have achieved the congressional purpose:

> Federal supervision of banking has been called "[p]robably the outstanding example in the federal government of regulation of an entire industry through methods of supervision * * *. The system may be one of the most successful [systems of economic regulation], if not the most successful." To the efficacy of this system we may owe, in part, the virtual disappearance of bank failures from the American economic scene. [Citation and footnote omitted.]

Id. at 330.

3. Respondent further argues that the Board's long-standing policy that holding companies should be a "source of strength" to bank subsidiaries is "not even a rational goal" (Br. 11 n.6) and that Congress, in vesting the Board with discretion to grant or deny applications, did not contemplate "that the Board would have banking objections—only that it would have the anti-trust and cartel type objections in which its economic expertise is appropriately respected" (Br. 22). Respondent cites no authority that supports these assertions. The first federal statute regulating bank holding companies (the Glass-

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considers the public interest that surrounds such institutions: "National banks are not merely private moneyed institutions but agencies of the United States created under its laws to promote its fiscal policies." *First Nat. Bank* v. *Anderson*, 269 U.S. 341, 347 (1926).

Steagall Act of 1933, ch. 89, Section 19, 48 Stat. 186-187) required holding companies to maintain substantial reserves to shore up the capital of subsidiary banks. In adopting the Bank Holding Company Act of 1956, Pub. L. No. 511, 70 Stat. 133, Congress expressed its expectation that holding companies would continue to strengthen the capital of subsidiary banks. See Pet. Br. 20 n.21. When Congress amended the Bank Holding Company Act in 1966, 80 Stat. 237-238, it emphasized that the Board "must consider the financial condition * * * of the holding company," thus assuring that the goal of financial strength previously served by the "prescribed reserve" requirement of the Glass-Steagall Act would continue to be served. S. Rep. No. 1179, 89th Cong., 2d Sess. 12 (1966). This history amply supports the conclusion that "[h]olding companies are supposed to be a source of strength to subsidiary financial institutions." S. Rep. No. 95-323, 95th Cong., 1st Sess. 11 (1977).

There is consequently nothing to respondent's argument that the Board, in passing on applications, serves merely as an antitrust enforcement agency and not as a bank regulator. To be sure, the Board is required to consider competitive factors under the first sentence of 12 U.S.C. 1842(c). But that provision also contains a second sentence, which requires the Board "[i]n every case" to scrutinize the financial resources and future prospects of both the parent and the subsidiary. Financial soundness and competitive effect are independent issues, and an adverse decision with respect to either will justify denial of

the application. S. Rep. No. 1095, 84th Cong., 1st Sess. 10 (1955).[5]

4. Respondent's contention that the Board's denial was "arbitrary and capricious" (Br. 22-25) appears to be simply a restatement of respondent's principal theme. If the Court accepts our argument that the Board may consider the financial strength of the proposed holding company and its bank subsidiary, then there was nothing arbitrary or capricious about the Board's action. It was consistent with the long line of prior decisions withholding approval of holding company applications that did not provide adequate capitalization of proposed subsidiary banks (Pet. Br. 30-31). Respondent appears to concede as much (Br. 27). If respondent is willing to make provision for adequate capitalization of its proposed subsidiary in a future application, the Board stands ready to give the matter fresh consideration. Respondent may improve the present capital deficiency by a number of methods, including finding new venturers who will contribute additional equity capital at the parent company level, by selling additional bank stock, or by retaining bank earnings for a period of time and raising the capital account to an acceptable level.

The Board's disagreement with the Comptroller and the Chicago Reserve Bank is itself evidence only that reasonable people could disagree about the appropriate disposition of respondent's application; it does not show that the Board's decision was arbitrary. The Board took the views of the Comptroller and the Chicago Reserve

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[5]See also *Washington Mutual Savings Bank* v. *Federal Deposit Insurance Corporation*, 482 F. 2d 459, 465 (9th Cir. 1973): "All bank supervisory agencies can reject merger applications if the banking factors are unfavorable whether or not a potential antitrust violation is present." Accord, 112 Cong. Rec. 2656 (1966) (remarks of Sen. Robertson).

Bank into consideration (Pet. App. 24a; A. 53, 56-57), but the Division of Research and Statistics, the Division of Banking Supervision and Regulation, and the Board itself had a different assessment of the situation *(ibid.)*.[6] Under 12 U.S.C. 1842(b) and (c), the final decision rested with the Board.

5. *Amicus* Independent Bankers Association argues (Br. 27-31) that the Board discriminates against one-bank holding company applications and favors multi-bank applications. *Amicus* bases this argument on an erroneous statement of the facts. Between 1971 and 1976 the Board approved 745 bank holding company applications, not the 421 shown by the chart on page 28 of the brief of *amicus*.The Board approved 667 applications for one-bank holding companies (not the 141 claimed by *amicus)* and 78 applications for multi-bank holding companies (not the 311 claimed by *amicus*).[7]

The Board's 43 denials of one-bank holding company applications represent a denial rate of approximately 6% (not the 30.4% claimed by *amicus*). The Board's 15 denials of multi-bank holding company applications represent a denial rate of approximately 19% (not the 4.6% claimed

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[6]The extent of disagreement should not be overstated. The Chicago Reserve Bank stated that it was probable "that capital ratios may be below Board guidelines during the [12 year] debt retirement period" (A. 21), but it felt that this factor should be disregarded in light of its optimism about future earnings and the "determination of [the] Bank's executive leadership" (A. 27). And although the Comptroller, after once recommending disapproval, changed his mind (A. 51), it is noteworthy that his bank examiner found that the Bank's capital/asset ratio had declined to approximately 5% and "strongly urged" the Bank to take "immediate steps to formulate and implement a program to fully restructure the capital funds picture to an acceptable level" (2 R. 231).

[7]The figures presented here have been certified by the Secretary of the Federal Reserve Board.

by *amicus*). One-bank holding company applications thus fare better, not worse, than multi-bank holding company applications.[8]

Amicus also argues (Br. 21-27) that the Board has issued certain "arbitrary" guidelines to determine whether holding company applications may be approved by local federal reserve banks acting under delegated authority. See 12 C.F.R. 265.2(f)(22). We would, if necessary, argue that the guidelines are quite rational,[9] but there is no need to do so. Respondent's application was not decided under delegated authority, and the proper extent of delegation therefore is irrelevant to the disposition of this case.

For the foregoing reasons, as well as those set forth in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

STEPHEN M. SHAPIRO
Assistant to the Solicitor General

OCTOBER 1978

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[8]The lower rate of denials of one-bank holding company applications reflects the fact that such applications rarely present the competitive problems that frequently result from the formation of multi-bank holding companies.

[9]The guidelines merely allow local reserve banks to screen out applications presenting relatively simple issues that may appropriately be resolved without full Board consideration.

DOJ-1978-09

IN THE

Supreme Court of the United States

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Petitioner,

vs.

FIRST LINCOLNWOOD CORPORATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR AMICUS CURIAE INDEPENDENT BANKERS ASSOCIATION OF AMERICA

HORACE R. HANSEN
WAYNE P. DORDELL
HANSEN, DORDELL and BRADT
600 Degree of Honor Building
St. Paul, Minnesota 55101
Attorneys for Amicus Curiae

1978—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

Statutes and Regulations:

Miscellaneous:

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OPINIONS BELOW

The brief for the Federal Reserve Board correctly cites the 1977 decision *en banc* of the Court of Appeals for the Seventh Circuit and the 1976 panel decision of that Court which includes the Board's order denying application of First Lincolnwood Corporation, in Illinois, to become a one-bank holding company.

JURISDICTION AND STATUTE INVOLVED

The Board's brief correctly states the matter of jurisdiction and the statute involved.

QUESTION PRESENTED

Whether the Federal Reserve Board has unlimited discretion to apply self-legislated, arbitrary guidelines in acting upon an application to form a one-bank holding company when anticompetitive factors are not present.

STATEMENT

Amicus accepts the statement of the case submitted by the parties herein.

I.

INTEREST OF AMICUS CURIAE

This brief is filed pursuant to Rule 42 of this Court with consent of all parties herein. (See *Amicus* App. pp. 1-2)

Amicus Independent Bankers Association of America is a nonprofit membership association composed of over 7,300 national and state banks in 41 states, including nearly 600 in Illinois.[1] These are banks, not associated with large and expansionist multibank holding companies or branching systems. Approximately 80% of its bank members have assets of less than $25 million, about one-half being located in communities of less than 5,000 population.

In the 48 years of its existence, *Amicus* has pursued the purpose of preserving independent banking while pre-

[1]A similar association is composed of smaller banks in the remaining 9 western states.

venting concentration of control of banking resources. The expansionist tendencies of multibank holding companies (MBHCs) increasingly dominate banking markets, forcing independent banks to defensive competition, particularly because of the disparity in capacity for advertising and promotion.

In the 1955 hearings, Congress viewed this trend with alarm and noted that already 12% ($23 billion) of the nation's total commercial bank deposits was controlled by MBHCs.[2] By the end of 1976, 34% ($188 billion) was controlled by MBHCs. When the largest one-bank holding companies (OBHCs) are added (those controlling over $50 million of deposits), the total deposits controlled are 67% ($372 billion). In contrast 1,160 smaller OBHCs, those with less than $50 million in bank deposits, control only 3.6% ($19.8 billion) of the nation's bank deposits, an average of only $17 million each.[3]

What Congress intended as a restraint measure has been converted into a permit law by the Board's administration. As will be shown later, the Board favors MBHC expansion.

Confronted with this trend, independent banks are finding it increasingly difficult to remain viable, and often find formation of a OBHC necessary. A OBHC is vital for two reasons: to raise capital to support growing deposits, and to transfer a smaller bank from one independent owner to another.

Moreover, under present tax laws, the formation of a OBHC is extremely beneficial. If loans are needed for either of these reasons, a OBHC provides more after-tax

[2]H. R. Rep. No. 609, 84th Cong. 1st Sess., Vol. 3, 8 (1955).
[3]*See Washington Financial Rep'ts*, Spec. Supp. July 18, 1977.

dollars for repaying the loan. The *graduated* individual income tax rate leaves fewer after-tax dollars as personal income increases. On the other hand, the *level* corporate tax rate provides more after-tax dollars. (See Tables in *Amicus* App. p. A-5) In addition, the OBHC can receive the bank's dividends tax-free (if it controls over 80% of the voting shares of the bank) and can realize other income from nonbanking activities permitted under Section 1843 of the Act. An insurance agency is commonly such an activity.

The interest of *Amicus* in this case is to urge that the OBHC form of ownership remains reasonably available. Increasingly, *Amicus* finds that frequently a retiring banker in selling the bank has basically two choices.

First, he can sell to a MBHC. Often the sale takes the form of a tax-free exchange of stock. The capital gains tax is then deferred until he sells part or all of the MBHC stock, or until the MBHC stock is transferred to his estate, when the capital gains tax will be minimal. Many retiring bankers dislike such a sale because the judgment center on bank credit shifts from the local community to the distant bank holding company.

Secondly, and the preferred alternative for many retiring bankers, is to sell to officers or directors of the bank in order to retain responsiveness to community needs. However, such buyers normally require a loan to complete the purchase, and require a OBHC to aid in repayment of the loan.

However, if the Board continues to make it extremely difficult to form a OBHC in such cases, this alternative will dissuade a local purchase. The result will be that more and more independent banks will be acquired by MBHCs, thus increasing an already excessive rate of concentration.

For these reasons, *Amicus* has a keen interest in the outcome of this case. If the court below is reversed, *Amicus* foresees great difficulty in preserving independent banking while preventing further concentration in banking.

II.

SUMMARY OF ARGUMENT

Federal bank holding company legislation has and continues to be concerned with the potential for concentration of banking resources and expansion into nonbank-related businesses. Multibank holding companies first became subject to comprehensive regulation under the Bank Holding Company Act of 1956. The purpose of the Act was to control MBHC expansion and to force divestiture of businesses not related to banking.

The current standards for Board action contained in the Act were adopted in 1966, following the pattern adopted under the Bank Merger Act earlier the same year. Since bank mergers and acquisitions both presented possible anticompetitive problems, Congress wanted a uniform standard for agency action on bank mergers and expansion of MBHCs.

One-bank holding companies were not covered by the Act until 1970. In the late 1960s, a few large OBHCs were formed and began widespread acquisitions of enterprises not related to banking. This was contrary to our longstanding national policy to separate banking and commerce, and was the primary reason for including OBHCs in the 1970 amendments to the BHC Act.

Shortly thereafter, the Board devised "guidelines" to apply to applications for the formation of OBHCs. These

"guidelines" fall outside of congressional concerns. They deal with terms and conditions of bank stock loans made by OBHCs for the purpose of increasing capital in the bank to support growth of deposits, or to help finance the purchase of a bank. These "guidelines" severely restrict the terms and conditions of such loans, and amount to an interference with the free play of the competitive loan market which previously existed.

The Board's record of administration of the BHC Act shows a decided bias in favor of MBHCs and against OBHCs. The Board uses an additional unwritten "guideline" to the effect that the BHC should always be a "source of strength" to the bank. This is used in many cases to deny OBHC formations, even though they present no anticompetitive or non-banking activity problems.

At the heart of this case is the Board's application of its "guidelines" to each OBHC application. Most problems presented in formations of OBHCs are due to the Board's own guidelines. The most onerous of these are (1) that the loan must be amortized within twelve years, and (2) that the BHC must be a "source of strength" to its subsidiary bank.

Amicus contends that the Board's arbitrary guidelines should be rescinded in order to permit the free play of the loan market which existed prior to 1970. There are adequate laws to deal with the occasional problems of "unsoundness" or "corrupt management" which might occasionally result from a free market. These laws are available to the Board and other bank supervisory agencies.

The Board should not be permitted to act as a superagency using its "guidelines" to overrule national and state bank supervisors and the FDIC who are primarily responsible for bank soundness.

ARGUMENT

I.

THE LEGISLATIVE HISTORY OF THE BHC ACT DEMONSTRATES THE BOARD'S AUTHORITY TO CONSIDER BHC FINANCIAL STRUCTURE IS PRIMARILY LIMITED TO MATTERS OF CONCENTRATION AND ACQUISITION OF NONBANKING SUBSIDIARIES.

To fully understand the discretionary powers of the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. §1842(c), an analysis of the history and purposes of bank holding company laws must be undertaken. This history will demonstrate that the arguments presented by the Board overemphasize its role as a regulator of banking institutions. Moreover, a review of legislative history will indicate that the Board has in the past and currently overlooks the primary concerns of Congress in the application of the Act: the concentration of financial resources and the expansion of OBHCs into nonbanking fields. Furthermore, the Board's discussion of the history and provisions of various BHC laws is distorted because it fails to distinguish between MBHCs and OBHCs.

A. Early Legislation Indicated Only A Fear of Concentration of Financial Resources.

The history of federal bank holding company regulation began with early expressions of concern in the late 1920s. In his Annual Message to Congress in 1929, President Herbert Hoover noted that the "development of 'group' and 'chain' banking presents many new problems." He

added that the "question arises as to whether if allowed to expand without restrain these methods would dangerously concentrate control of credit. . . ."[4] Thus the original impetus for federal BHC regulation was the fear of concentration of financial resources.

The first federal legislation dealing specifically with BHCs was the Banking Act of 1933 which applied only to *national* banks controlled by holding companies. It required that a holding company obtain a voting permit from the Board in order to vote the stock of a bank. The conditions for the permit included a requirement that the holding company, beginning 5 years after 1933, must possess a reserve of readily marketable assets which "*may* be used by it for replacement of capital in banks affiliated with it and for losses incurred in such banks. . . ."[5] (emphasis added) Contrary to the Board's brief (pp. 25, 26), the 1933 Act did not require a BHC to be a "source of financial strength to its subsidiary bank."

Congress in enacting Section 61 made no attempt to prohibit or to restrict bank holding company activities, nor did it require supervisory approval of any action to be taken by BHCs. This is far different from the 1956 Act which created a prior approval system.[6]

Further proof that the 1933 Act was not "the precursor of section 3(c) of the BHC Act of 1956" (Board's brief p. 25) can be found in the Board's objection to Congress' 1956 attempt to repeal Section 61. The Board objected to the attempted repeal because the purposes of Section 61 and the 1956 Act differed. The Senate report stated:

[4]Englert, *The Development of Bank Holding Company Legislation. The Bankers Magazine*, 21, 22 (1971).
[5]Section 19, 48 Stat. 186, originally codified as 12 U.S.C. §61, repealed 1961.
[6]Supra, Englert, at 22.

> "The Board had recommended that this matter not be included in the bill on the ground that the holding company affiliate provisions were directed primarily at maintaining the *soundness of member banks in holding company groups and therefore were beyond the scope of the objectives of the bank holding company legislation*. At the same time the Board indicated that it might be desirable eventually to modify the holding company affiliate provisions." (emphasis added)[7]

Two years later "the Banking Act of 1935 included a provision which resulted in most one-bank holding companies being granted exemptions from the 1933 Act."[8] It can be assumed that the reason for OBHC exemption in 1935 was that they presented no problems then, as in 1956, when Congress again concluded that OBHCs presented no problems. Accordingly, the foundation upon which the Board constructs its argument is suspect.

B. The Bank Holding Company Act of 1956.

Multibank holding companies first came under comprehensive regulation by the Board with the passage of the Bank Holding Company Act of 1956. The primary purpose of the Act was to control MBHC expansion in order to prevent undue concentration of banking resources in MBHCs, and at the same time to force their divestiture of nonbanking enterprises not related to banking.

[7]Committee Print, *Amendments to the Bank Holding Company Act of 1956*, Senate Comm. on Banking and Currency, 89th Cong. 1st Sess., 1965.
[8]*See*, Board Study, *The Bank Holding Company Movement to 1978: A* Compendium, Section II, Savage *A History of the Bank Holding Company Movement, 1900-1978* (1978).

Chairman Martin, testifying on behalf of the Board in the 1955 hearings, thought legislation was needed due to:

> "1. The unrestricted ability of a bank holding company group to add to the number of its banking units, making possible the concentration of commercial bank facilities in a particular area under a single control and management; and
>
> 2. The combination under single control of both banking and non-banking enterprises, permitting departure from the principle that banking institutions should not engage in business wholly unrelated to banking. Such a combination involves the lending of depositor's money, whereas other types of business enterprise, not connected with banking do not involve the settlement of trusteeship."[9]

The 1955 House Report stated:

> "The holding company device lends itself readily to the amassing of vast resources obtained largely from the public, which can be controlled by the relatively few who comprise the management of the holding company, giving them a decided advantage in acquiring additional properties and in carrying out a program of expansion."[10]

The 1955 Senate Report stated:

> "The factors required to be taken into consideration by the Federal Reserve Board under this Bill also require contemplation of the prevention of undue concentration of control in the banking field to the detriment of public interest and the encouragement of competition in banking."[11]

[9]S. Rep. No. 1095, 84th Cong. 1st Sess., 1955, *reprinted in* [1956] U.S. Code Cong. & Ad. News 2482-83.
[10]H. R. Rep. No. 609, 84th Cong. 1st Sess., Vol. 3 (1955).
[11]S. Rep. No. 1095, 84th Cong. 2nd Sess., 2482, *et seq.* (1955).

Both the Senate and House reports indicate that the purpose of Congress in adopting the Act was specifically for the purpose of controlling *multibank* holding company expansion and to prevent their engaging in nonbanking activities not related to banking. The Board's power of regulation over MBHCs should be interpreted as being necessary to carry out these purposes, and the Board's use of such phrases as "public interest" and "sound banking" should be construed within the context of these congressional concerns.

Consequently, the basis of the Board's argument as they relate to the formation of *OBHCs,* falls outside these congressional concerns.

C. The 1966 Amendments To The BHC Act.

The 1966 amendments to the BHC Act of 1956 replaced the standards to be followed by the Board in the prior approval system.[12]

The standards were changed to conform identically with the standards adopted earlier in 1966 for bank mergers. 12 U.S.C. §1828(c)(5) The only explanation for this change is contained in the Senate report:

> "*Conforming standards in holding company cases with those in mergers.*—in the interest of uniform

[12]Former Section 1842(c) contained 5 factors: (1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking. Section 3(c) of the Bank Holding Company Act, *reprinted in* [1956] U.S. Code Cong. & Ad. News 171.

> standards, the Bill would amend §3(c) of the Bank Holding Company Act to require the Board, in acting on applications for the formation or expansion of holding company systems, to take into account the same factors as are specified in the recently amended Bank Merger Act (Public Law 89-356) for consideration in passing on bank mergers. See also item 19."[13]

In order to determine congressional purpose for changing the standards in Section 1842(c) it is necessary to review the legislative history of the identical change made earlier in 1966 in the Bank Merger Act.

The Bank Merger Act was originally enacted in 1960 to create a prior approval system for bank mergers at the administrative level instead of leaving their adverse effects to be dealt with entirely under the antitrust laws. The appropriate regulatory agency was required to review, and either approve or deny, a proposed merger.[14]

The 1960 Act was silent as to the role of the attorney general in commencing lawsuits under the Sherman or Clayton Acts to prevent or break up a bank merger. Between 1960 and 1966, three major court decisions found bank mergers to be unlawful after receiving agency approval under the 1960 Act. *United States v. First Nat'l Bank & Trust Co.*, 376 U.S. 665 (1964); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *United States v. Manufacturers Hanover Trust Co.*, 240 F. Supp. 867, (S.D.N.Y. (1965)).

[13]S. Rep. No. 1179, 89th Cong. 2nd Sess., 9, 1966, *reprinted in* [1966] U.S. Code Cong. & Ad. News 2393. Item 19 refers to the explanatory section which indicates that the same anti-trust procedures and uniform standards would apply under the Bank Holding Company Act as had been instituted under the Bank Merger Act. See p. 2394.

[14]The Comptroller for a resulting national bank, the Board for a resulting insured nonmember bank, and the FDIC for a resulting insured nonmember bank. The Bank Merger Act of 1960 amended the Federal Deposit Insurance Act, currently codified at 12 U.S.C. §§ 1811 *et seq.* The Act was applicable to all banks insured by the FDIC, which covers over 95% of all national and state banks. Prior to 1960, 12 U.S.C. §264, from which section 1828 is derived, required an insured bank to obtain consent of the FDIC only when it merged with a non-insured bank.

Less than one month after the *Manufacturers Hanover* decision, S.1698 was introduced in an attempt to overrule the decision. The Bill originally provided that agency approval of a merger "shall be exclusive and plenary."[15] The proponents argued this system was adequate and that after such approval and consummation of the merger there would be great problems in unscrambling assets, if the merger should be found later to be unlawful under the antitrust laws.

The opponents argued that the record of the agencies in approving bank mergers was dismal and that antitrust prosecutions were needed as a backstop.[16] These hearings show that of 675 applications passed on by the banking agencies 644 were approved and only 31 disapproved.[17]

In the process of the hearings in 1965, the drastic provisions of S.1698 were temporized along the line of a suggestion made by Chairman Martin speaking for the Board:

> ". . . to amend the Bank Merger Act to allow a specified time within which an antitrust action might be brought to prevent consummation of an approved merger and, if such an action were not filed during that time, the merger could be consummated and would be exempt from any proceeding under the antitrust laws."[18]

[15]Hearings on a Bill to Amend the Bank Merger Act before the Senate Committee on Banking and Currency, 89th Cong. 1st Sess., 6 (1965).

[16]*Id.* at 152.

[17]*Id.* at 152.

[18]*Id.* at 152.

The version finally enacted[19] included the standards which became the model for Section 1842(c) of the BHC Act. Thus, there is currently an identical set of standards for the regulatory agency to follow in both mergers and acquisitions.

The reason for uniformity is that in a *merger* a bank disappears from the competitive arena, while under the BHC Act the same thing happens in a slightly different way. In an *acquisition* by a MBHC, the acquired bank ceases to be a separate and independent judgment center for bank loans and services. Instead, the central management of the MBHC becomes the new judgment center. If a MBHC has 20 subsidiary banks, a businessman seeking a loan does not have 20 alternate sources of credit, only one. The sister banks in a holding company system do not compete with each other and its management maintains centralized credit files for the subsidiary banks.

In short, both Acts were designed to control anticompetitive effects of mergers and acquisitions by permitting the designated federal agency to approve mergers and acquisitions only if the public interest clearly outweighed the anticompetitive effects.[20] Antitrust actions are retained as a backstop if commenced within 30 days after agency approval.

As discussed below, after OBHCs were included in the Act in 1970, the Board has treated the last unnumbered paragraph of Section 1842(c) in isolation and applied that paragraph to OBHC formation applications in a manner inconsistent with the foregoing legislative history.

[19]12 U.S.C. §1828.
[20]*See Bank Holding Company Regulatory Experience Since 1970*, 8 Ind. L. Rev. 942, 944 (1975).

D. The 1970 Amendments To The Bank Holding Company Act.

In 1968 Congress became concerned that a few large OBHCs (then exempt from the BHC Act) were growing at a rapid rate and acquiring many nonbanking enterprises not related to banking. Some of the largest banks in the nation were acquiring such businesses as mining and manufacturing companies, nationwide chains of stores and insurance companies. Altogether there were numerous varieties of such nonbanking enterprises acquired by large OBHCs, many by a tax-free stock exchange, in the same manner that industrial conglomerates are formed.

This trend increased to such a point that in 1969 Congress conducted hearings aimed at placing OBHCs under the BHC Act and amending Section 1843 to permit BHCs to own only *bank-related* enterprises, while mandating divestiture of other businesses.[21]

The Senate report states the purpose of the amendments was to "continue our long-standing policy of separating banking from commerce."[22]

Mr. Patman, Chairman of the House Banking Committee, stated on the floor of the House:

> "Congress did not think it necessary to regulate one-bank holding companies in the 1956 act because almost all of them at that time were quite small and had little overall economic power. But by 1969, due

[21]For the legislative history of the 1970 amendments, see H. R. Rep. No. 91-387, 91st Cong. 1st Sess. (1969); S. Rep. No. 91-1084, 91st Cong. 2nd Sess. (1970), *reprinted in* [1970] U.S. Code Cong. & Ad. News 5519; Conf. Rep. No. 91-1747, 91st Cong. 2nd Sess. (1970), *reprinted in* [1970] U.S. Code Cong. & Ad. News 5561.
[22]S. Rep. No. 91-1084, 91st Cong. 2nd Sess. (1970), *reprinted in* [1970] U.S. Code Cong. & Ad. News 5522.

to the dramatic growth in one-bank holding companies outlined above, it became clear that the *major banking institutions* in the United States were prepared to use this device to expand into many nonbanking fields prohibited to them as banks by the banking laws. In addition, many *large conglomerates* decided to become one-bank holding companies by acquiring banks." (emphasis added)[23]

In the 1969 hearings before the House Banking Committee, Governor Robertson, testifying for the Board, explained the existing exemption for OBHCs:

> "MR. ROBERTSON. May I attempt to answer this? It wasn't an oversight. We recommended that there be no loophole. The loophole was permitted because there were at that time a little over 100 small—and they were all small—holding companies which had been set up in small towns in order that the owners of that stock of the bank could get the benefit of the tax features which were involved when the dividend came from the bank into the holding company. The holding companies had other businesses from which it could get other nondividend income. So it could get the benefit of the tax features.
>
> They contended these small individuals would be in a position to use those earnings to pay off the loan they made in order to buy the bank stock, and that otherwise they couldn't service the loan. The argument was if they weren't in a position to do this, then these small banks would be merely gobbled up by the big holding companies which could afford to come in and buy them. And this was undesirable, and on this basis the Congress decided, as I understand it, to exempt the one-bank holding companies. This

[23]115 Cong. Rec. 32893-94 (1969).

> wasn't a serious problem and if it became a serious problem, Congress would deal with it."[24]

Thus, the real purpose of the 1970 amendments was to prevent large OBHCs from forming nationwide conglomerates and from securing undue concentration of national resources.[25]

In contrast, there is nothing in the history of the 1970 amendments to indicate that Congress was concerned with smaller OBHCs. In fact, Chairman Martin, testifying for the Board, suggested exemption of OBHCs having bank assets of less than $30 million and nonbanking assets of less than $10 million.[26]

A careful reading of the legislative history of the 1970 amendments indicates no support whatever for the Board's "guidelines" written or unwritten, used to deny OBHC formations.

E. Effect of 1970 Amendments on Section 1842(c) Standards.

The problem which now must be resolved is how to apply the standards in Section 1842(c) to an application for the formation of a OBHC that does not present anticompetitive problems. The Board answers this question in the following manner:

> ". . . Congress could scarcely have intended that the Board would have no discretion to consider the bear-

[24]Testimony of Governor Robertson before the House Committee on Banking and Currency, Hearings on Bank Holding Company Act Amendments, 91st Cong. 1st Sess., p. 233 (1969).

[25]See Board Study, *The Bank Holding Company Movement to 1978, supra*, Section VIII.

[26]Hearing on a Bill to Amend the Bank Holding Co. Act before the House Committee on Banking and Currency, 91st Cong. 1st Sess., 201 (1969).

ing of the 'financial and managerial resources of the company * * * and the bank[] concerned [on the] * * * needs of the community to be served.' Not only the plain language of the statute but also its specific extension to single bank holding companies demonstrates the Court of Appeal's error." (Board's brief p. 23)

The Board's answer is not credible because it conveniently omits the last portion of Section 1842(c). This section in its entirety reads:

> "In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the *banks* concerned, and the convenience and needs of the community to be served." (emphasis added)

The phrase "financial and managerial resources" refers to "the *banks* concerned. . . ." The use of the plural, "banks", cannot be regarded as unintentional. The phrase apparently has its genesis in the 1966 amendments to Section 1828(c), the Bank Merger Act. The House Banking Committee explains the phrase in the following manner:

> "First, it is intended to make it clear that the public interest referred to is specifically related to the convenience and needs of the community to be served. In other words, the banking factors which relate only to the *financial and managerial resources and future prospects of the existing and proposed institutions could never, in and of themselves, be used as the sole justification for an anticompetitive merger unless the failing company doctrine* (an integral part of the antitrust law and not intended to be affected by the bill) *were involved.*" (emphasis added)[27]

[27]H. R. Rep. No. 1179, 89th Cong. 1st Sess., 11 (1965).

A year later, in the Second Session of the 89th Congress the report of the House Banking Committee was more specific:

> "Your committee has taken this opportunity to revise the archaic and inappropriate phraseology by which existing law expresses the so-called banking factors as applied to bank mergers. It had its origins in the National Bank Act of 1863 and has become successively less appropriate as it was copied into the Federal Reserve Act in 1913, later into the Federal Deposit Insurance Act of 1933, and then finally again into that act in 1960. Its meaning in the present context is much better expressed as '*the financial and managerial resources* and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.' Of course, the expression of these factors in the statute would not preclude the banking agencies charged as they are with general supervisory responsibility, from considering in any particular case such other factors as they might deem relevant. *However, only the convenience and needs of the community to be served can be weighed against anticompetitive effects, with financial and managerial resources being considered only as they throw light on the capacity of the existing and proposed institutions to serve the community.*" (emphasis added)[28]

Section 1842(c) must be read in its entirety, and not separated and isolated in part as the Board attempts to do.

In short, "financial and managerial resources" are to be considered only in connection with anticompetitive ef-

[28]H. R. Rep. No. 1221, 89th Cong. 2nd Sess. (1966), *reprinted in* U.S. Code Cong. & Ad. News 1863.

fects and the capacity of the institutions involved to serve the community. This phrase is misused by the Board to support its "guidelines" in situations, as in the instant case, presenting no anticompetitive factors. Undoubtedly Congress had in mind that the bank supervisors and the FDIC would adequately assure bank soundness.

F. Summary of Legislative History.

There is no support in the legislative history that the Board, in its regulatory role under the BHC Act, has discretion to apply uniformly arbitrary guidelines in denying OBHC applications. In effect, the Board is attempting to do indirectly what it cannot do directly, for it has no regulatory authority over the operational aspects, including capital restructuring, of *banks* under the BHC. These powers reside in the primary bank supervisors and the FDIC.

The Board's discretion in approving or denying holding company status to an applicant must be exercised to effectuate the purpose of Congress in adopting and amending the BHC Act. The intent of Congress was to correct adverse results to the banking public arising from the concentration of financial resources and the acquisition of nonbanking businesses by BHCs.

Amicus submits that it is the clear purpose of the statute to implement an antitrust policy, and to keep banks out of unrelated businesses. Nothing in the statute or legislative history in instances like *First Lincolnwood* indicates that approval is conditioned upon the holding company being of such strength as to *add* to the existing strength of the bank. Indeed, this subject is simply not discussed in the legislative history, is not found in the language of

the statute, and has no basis external to the writings of the Board. Accordingly, *Amicus* submits that the decision below is correct.

II.

THE BOARD'S ARBITRARY GUIDELINES CREATE THE SO-CALLED "USOUND" FINANCIAL STRUCTURE OF OBHCs.

In this case, the Board relies heavily upon the words, "future prospects" and throughout its brief refers repeatedly to adverse effects of a transaction which *may* weaken the bank in the future or cause other abuses, all on the basis of conjecture and without evidence. For example, the Board's staff asserts in the instant case: "In our opinion this strain on bank's earnings to service this $3.7 million debt, in itself, is sufficient to warrant denial of the application." The Board denied the application on this basis. (Board's brief p. 8, 9)

This "strain" is of the *Board's own making* because the Board's "guidelines" require the debt to be amortized over a period of 12 years. The same debt previously owed by individuals had no such limited amortization.

A. History of the Board's Arbitrary Guidelines.

A brief history of the Board's "guidelines" is enlightening. After adoption of the 1970 amendments, the Board adopted in-house rules which were later formalized. These original "guidelines" may be summarized as follows:

1. Whenever an offer is made to acquire shares of a bank, the offer must be extended to all shareholders of the same class on an equal basis.
2. The amount borrowed by the holding company to

purchased the voting shares of the bank shall not exceed either:

(a) 50 percent of the purchase price of the shares of the bank or

(b) 50 per cent of the equity capital of the holding company.

3. The loan will be repaid within a reasonable period of time (not to exceed 10 years).

4. The interest rate on the loan is comparable with other stock collateral loans by the lender to persons of comparable credit standing.

5. The loan is not conditioned upon maintenance of a correspondent bank balance with the lender that exceeds the usual needs of the bank whose shares are being purchased.

6. Interest on and amortization of the holding company's indebtedness will not exceed, in any year, 50 per cent of the holding company's proportionate share of the bank's anticipated net income (after taxes) for that year.[29]

After a flurry of complaints from the banking industry, the Board formulated revised guidelines on October 30, 1972.[30] These revised guidelines may be summarized as follows:

1. Unchanged.

2. Changed to increase the amount borrowed by the OBHC to purchase the voting shares of the bank to a limit of 75% of the purchase price.

[29]See Fed. Res. Press Release, July 5, 1972.
[30]12 C.F.R. §265.2(f) (22).

3. Changed to increase the loan repayment period to a limit of 12 years.

4. Unchanged.

5. Unchanged.

6. Deleted.

These revised guidelines have been used by the District Banks to the present time. They have also been used by the Board whenever, as in the instant case, a District Bank refers a OBHC application to the Board for final disposition.

B. Circuit Court Treatment of the Board's Arbitrary Guidelines.

The first guideline was deleted after the decision in *Western Bancshares, Inc. v. Board of Governors,* 480 F. 2d 749 (10th Cir. 1973). The findings and reasoning used in this landmark case can be applied with equal force to the remaining guidelines. After carefully considering the legislative history of the 1970 amendments the Court concluded there was no legal authority for the first guideline, because it was "based entirely on [the Board's] administrative policy . . ." and that "neither administrative agencies nor courts may legislate." The Court found that "issues as to reasonableness or inequality of stock purchases must be decided upon the basis of the law of contracts, or such other principles of law as may be applied in a forum competent to adjudicate the issues between the parties thereto." Although the Court noted that the agency charged with enforcement is entitled to great deference by the courts, it held ". . . we are not bound thereby, and

particularly so where neither the Act nor the legislative history contains one word expressly permitting the administrative authority assumed." The Court also noted that "Congress had not seen fit to speak on the subject matter" and concluded that "we refuse to imply that administrative authority exists empowering the Board to regulate the offering price for bank stock acquired under the Bank Holding Company Act."[31]

In the instant case, a second Court of Appeals after carefully reviewing the legislative history of the Board's authority to act upon a OBHC application found that the Board lacked power to deny the OBHC application.

Thus, two Courts of Appeal have set aside denials by the Board where the basic reason was the arbitrary guidelines of the Board. In *Western Bancshares*, the guideline itself was found to be unlawful. In *Lincolnwood* the "strain on the bank's earnings", was caused by the Board's own "guideline" requiring retirement of the $3.7 million debt in a 12-year period. Accordingly most OBHC formation denials can be traced to the Board's own arbitrary guidelines, woodenly applied to almost every application. In contrast, a free loan market would permit a longer period of amortization, as existed prior to the guidelines in 1971, and no "strain on bank earnings" would then occur.

C. The Board's Arbitrary Unwritten Guideline.

The Board also has an *unwritten* "guideline" which states that in every application for formation of a OBHC, it must be demonstrated that the OBHC will be a "source

[31] *Western Bancshares Inc. v. Board of Governors*, 480 F.2d 749, 751 (10th Cir. 1973).

of strength" to the subsidiary bank. This guideline was used in the instant case (546 F.2d 722, 723) and in many other denials of applications for OBHC formations (see *Amicus* App. p. A-9). The court below brushed aside this "guideline" as having no foundation in law.

The Board (Board's brief p. 31) refers to S. Rep. No. 95-323 as authority for its argument that Congress approves of the Board's actions in having adequately financed one-bank holding companies that would provide "a source of strength" to their subsidiary banks. This report, however, emphasizes the problem of bank holding companies which operate *nonbanking subsidiaries:*

> "Bank holding companies and savings and loan holding companies have been permitted to engage in activities *outside the traditional fields of banking* and operating savings and loan associations. In some situations these activities have involved significant risks or losses to a point where the safety of subsidiary financial institutions have been threatened. Holding companies are supposed to be a source of strength to subsidiary financial institutions. Unfortunately, in too many instances holding companies have been a drain on the subsidiary financial institution, affecting the safety or soundness of such institutions.
>
> Under the bill, whenever the Federal Reserve, in the case of a bank holding company, or the FHLBB, in the case of a savings and loan holding company, have reason to believe that the continuation by a holding company of the ownership or control of a *nonbank* or noninsured subsidiary constitutes a serious risk to the financial safety of a subsidiary bank or savings and loan association, as the case may be, the Federal Reserve or the FHLBB may order such holding company to *divest itself of the nonbank or*

noninsured subsidiary, or to terminate its activities." (emphasis added)[32]

While Congress felt that BHCs should be a source of financial strength to their subsidiary banks in certain cases, the concern focused on the financial problems of *nonbank subsidiaries* of the BHC which could sap the strength of these banks. There is nothing in the history to suggest Congress was particularly concerned with the formation of a one-bank holding company involving merely a formalistic change in ownership (such as First Lincolnwood) or the transfer of a small bank, where *nonbank activities* posed no threat.

As in the instant case, almost all OBHC formations are for the purpose of tax savings in the servicing of the debt involved in the transfer of ownership of a bank. In the instant case the tax saving would amount to $130 thousand in the first year. Tax benefits are essential and necessary in the transfer of a smaller bank from one independent owner to another. Without these tax benefits potential buyers of smaller banks would be discouraged from making the purchase due to the graduated personal income tax rate. Simply stated, if the purchase loan is made by a OBHC, there are more after-tax dollars available for repayment of the loan. This is demonstrated by the four tables appearing in *Amicus* App. p. A-5.

There is no valid reason why these tax benefits should not be available to purchasers of banks as they are to purchasers of any other kind of business. However, the Board takes a different view. As stated by the Court below, "the Board assumes the stance that the tax advantage

[32]S. Rep. No. 95-323, 95th Cong. 1st Sess., 11-12 (1977).

of bank holding company status is a reward which it may withhold until the applicant's financial status fulfills the Board's standard of desirability. We do not find this power or breadth of discretion of the statute." (560 F.2d at 262)

The Board has used this "reward" to cause increases in capital of subsidiary banks. (Pet. for Writ, n.9) *Amicus* submits this is an unlawful usurpation of the responsibility of bank supervisors and the FDIC. There is no legal basis for this usurpation, in any law or legislative history. Furthermore, tax regulation is assigned to the Treasury Department.

III.

THE BOARD'S RECORD INDICATES A BIAS AGAINST FORMATION OF OBHCs.

The Board's record of administration of the Act demonstrates a decided bias in favor of MBHCs and against formation of OBHCs. Notwithstanding the clear purpose of the BHC Act, the Board has distorted its purpose and converted it from a restraint law to a permit law. From 1956 through 1976, the Board approved 1,230 acquisitions by bank holding companies under Section 1842(a)(3) and during the same period denied only 110 such applications. This is a denial rate of only 8.2%. These figures are derived from the annual reports of the Board to Congress for these years. (*Amicus* App. p. A-20)

The following tables show that during the period 1970-1976 the Board approved 411 BHC formations and denied only 58. The figures in the following tables refer only to applications for the *formation* of OBHCs and MBHCs

during this 7 year period. The percentage of denials in both categories does not appear significant until the two are compared. The rate of denials of OBHC applications is 30.4% against an MBHC denial rate of only 4.63%.

TABLE 1

ONE-BANK HOLDING COMPANY FORMATION SUMMARY

(1970-1976)

Year	Total	Approvals	Denials	Denial of BHC Status to Banks with Less Than $50 million in Assets	Denial Rate
1970	4	4	0	0	0%
1971	18	16	2	1	11%
1972	28	24	4	3	14.5%
1973	3	3	0	0	0%
1974	25	14	11	8	44%
1975	35	19	16	16	45.7%
1976	28	18	10	8	35.6%
Total	141	98	43	36	30.4%

Source: Federal Reserve Bulletins (1970-1976).

Table 2

MULTI-BANK HOLDING COMPANY FORMATION SUMMARY

(1970-1976)

Year	Total	Approvals	Denials	Denial Rate
1970	27	27	0	0%
1971	49	49	0	0%
1972	51	44	7	13.7%
1973	55	54	1	1.8%
1974	63	58	5	7.9%
1975	30	30	0	0%
1976	36	34	2	5.8%
Total	311	296	15	4.63%

Source: Federal Reserve Bulletins (1970-1976); Annual Reports of the Board of Governors of the Federal Reserve System to Congress (1970-1976).

These tables, however, do not tell the whole story. The Federal Reserve District Banks require informal conferences before a final application for a OBHC formation is submitted for action. In this informal procedure many such proposals are discouraged or turned away. These denials

are never recorded. The record shows that the Board looks with great favor upon the formation of MBHCs and discourages or denies the formation of OBHCs.

There are several apparent reasons for the Board's attitude. First, the Board's primary function is to establish monetary policy. It is obviously easier for the Board to obtain prompt response to shifts in its economic policies from large MBHCs. In these companies there is centralized management and a lead national bank. The subsidiary banks carry their correspondent balances with the lead bank. A holding company system operates like a funnel, swelling the deposits controlled by the lead bank which is always a member of the Federal Reserve System.

Secondly, it is not surprising that the Board favors large bank systems. It presides over one, consisting of 12 huge banks with 25 branches. The entire Federal Reserve System is manned by those who are a part of and believe in large bank systems, including the directors of the District Banks.

Finally, a recent House study shows that the District Bank Boards are dominated by representatives of large MBHCs and large industries who are dependent on large banks.[33]

In such a system, the record of the Board, demonstrating an attitude favoring expansion of large bank systems, is more understandable. While this attitude arguably suits the Board's primary function, such an attitude is inappropriate in administrating the BHC Act. This is particularly true as it relates to small OBHCs.

The Board's attitude and internal policies not only are

[33] *See* Staff Rep. compiled for the House Banking Committee, *Federal Reserve Directors: A Study of Corporate and Banking Influence* (1976).

a radical departure from congressional intent to restrain BHC expansion, but also are in defiance of our long established national bank policy to encourage banking competition while restraining concentration of control of banking.

As succinctly stated by this Court in *United States v. Philadelphia National Bank*, 374 U.S. 321, 372 (1963):

> ". . . [W]e note that if the businessman is denied credit because his banking alternatives have been eliminated by mergers, the whole edifice of an entrepreneurial system is threatened; if the cost of banking services and credit are allowed to become excessive by the absence of competitive pressures, virtually all costs, in our credit economy, will be affected; and unless competition is allowed to fulfill its role as an economic regulator in the banking industry, the result may well be even more governmental regulation. Subject to narrow qualifications, it is surely the case that competition is our fundamental national economic policy, offering as it does the only alternative to the cartelization of governmental regimentation of large portions of the economy."

While that case involved a merger, the acquisition of a bank by a multibank holding company is another means of eliminating an alternate source of bank credit and services. Congress viewed bank mergers and BHC acquisitions in the same light, as both are a threat to the maintenance of banking competition. This is why Congress adopted the same standards in both acts in 1966 to guide the federal banking agencies in both prior approval systems. (Section 1828(c)(5) on mergers; Section 1842(c) on acquisitions).

Competition is the great regulator in banking, not the

federal and state agencies. The regulatory agencies are concerned with soundness of every bank as a safe place for the deposit of the public's money, and to assure that banks adhere to laws and regulations. They should not, however, elevate their economic policies over our nation's fundamental policy of encouraging competition in banking.

IV.

REASONABLE LIMITS MUST BE PLACED ON THE BOARD'S AUTHORITY REGARDING FORMATION OF OBHCs.

At the heart of this case is the proper application of the standards set forth in Section 1842(c). These standards can properly be applied to a OBHC, for example, that presents an anticompetitive problem, either in banking or nonbanking activities. There are large OBHCs in some states which dominate their bank markets. Some are extremely active in acquiring or commencing *de novo* nonbanking activities. In such cases, as the legislative history shows, the standards in Section 1842(c) may properly be used to deny OBHC formations.

Also, there may be OBHCs, large and small, involving corrupt management. In such cases it would be proper to deny a OBHC formation.

However, the vast majority of applications for OBHC formations do not present any anticompetitive problems. They have good management and are able to service any debt involved if the free play of the market were allowed to dictate the terms and conditions of the loan. If the competitive loan market were allowed to operate, the availability and amount of the loan, rate of interest, debt retire-

ment period, and the debt-equity ratio would all become a matter of negotiation between the borrower and the lending bank.

If this were permitted, as it was for decades prior to 1971, there would be adequate safeguards in other laws. For example, the *lending* bank is subject to supervision and annual examination by the national or state supervisor. If any OBHC loan were found to be substandard by the supervisor, the lending bank could be made to call the loan or refinance it in some way. In addition, the FDIC has similar supervisory power. Also available is a cease and desist order or an order for the removal of the offending officers and directors under 12 U.S.C. §1818. The last resorts would be to cancel FDIC deposit insurance or revoke the bank's franchise. Moreover, as to the BHC itself, the 1974 amendment to Section 1818 gives the Board power to use cease and desist orders. Finally, there is a criminal statute concerning misapplication of bank funds (18 U.S.C. §656) which would permit the Justice Department to act where serious abuses occur.

The Board should give great weight to conclusions of the national and state bank supervisors and the FDIC whose primary duty is to assure bank soundness. It should not act as a superagency using unwarranted "guidelines" to overrule these primary supervisors, as in the instant case.

Remedies are available to deal with undesirable persons or unsound practices, and restrictions under the Board's arbitrary "guidelines" which shroud the loan market are not only undesirable, but find no support in any legislative history. Furthermore, the Board's policies and guidelines run counter to our deliberate national policy to preserve competition in banking.

When a OBHC seeks a loan from a bank, the need for competition at that level is just as important as competition at the bank-customer level. In fact, there is no difference between a OBHC loan secured by bank stock, and a commercial loan secured by corporate stock. For example, a businessman may seek a loan to purchase or build a plant or store. Our system affords him the opportunity to shop for his loan in the same manner a OBHC should be permitted to shop for a loan upon reasonable terms and conditions that only competition can provide.

Prior to 1971, it was not unusual for individual or OBHC bank purchase loans to be made on a one-year renewable note or a ten-year note with a "balloon" at the end, secured by the bank's controlling stock. In short, there was no specified amortization period. This gave the lending bank opportunity for periodic review and the right to refinance or call the loan or change the interest rate. Thus, the borrower was under compulsion to repay within a reasonable period which might extend from 20 to 30 years. This pattern is no different from other large capital loans made to businessmen.

The forces of competition, coupled with the right of bank supervisors, including the Board, to obtain cease and desist orders, provides adequate control.

There is no need for the Board's guidelines to be woodenly applied to all OBHC formation applications. These guidelines should be rescinded. This case provides the opportunity for this Court to declare that the Board's "guidelines" are unlawful, under the statute involved and the legislative history of the BHC Act.

V.

CONCLUSION

For the reasons stated, the decision of the Court below should be affirmed and the Board instructed as to the limits of its authority to deny applications for formation of OBHCs which present no anticompetitive problems.

Respectfully submitted,

HORACE R. HANSEN
WAYNE P. DORDELL
600 Degree of Honor Building
St. Paul, Minnesota 55101
Attorneys for Amicus Curiae

DATED: June 19, 1978.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief and Appendix was furnished, on behalf of Amicus Curiae Independent Bankers Association of America, by air mail, postage prepaid, on June 19, 1978, to Wade H. McCree, Jr., Solicitor General, Washington, D. C. 20530, Attorney for Appellant, and to George B. Collins, One North LaSalle Street, Chicago, Illinois 60602, Attorney for Respondent.

Attorney for Amicus Curiae Independent Bankers Association of America
HANSEN, DORDELL & BRADT
600 Degree of Honor Bldg.
St. Paul, Minnesota 55101

APPENDIX

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D.C. 20530

May 19, 1978

Horace R. Hansen, Esq.
Hansen, Dordell & Bradt
600 Degree of Honor Building
Fourth & Cedar Streets
Saint Paul, Minnesota 55101

Re: Board of Governors of the Federal Reserve System v. First Lincolnwood Corp. (October Term, 1977—No. 77-832)

Dear Mr. Hansen:

I hereby consent to your filing of a brief *amicus curiae* in the above-captioned case on behalf of the Independent Bankers Association of America in the Supreme Court.

Sincerely,

/s/ WADE H. McCREE, Jr.
Solicitor General

COLLINS & AMOS
Counsellors at Law
One North LaSalle Street
Chicago, Illinois 60602

May 12, 1978

Mr. Horace R. Hansen
Hansen, Dordell & Bradt
600 Degree of Honor Building
Fourth & Cedar Streets
St. Paul, Minnesota 55101

Re: Board of Governors v. First Lincolnwood Corp., U.S. S. Ct., Oct. Term 1977, #77-832

Dear Mr. Hansen:

Thank you for your letter of May 9, 1978.

As counsel for First Lincolnwood Corporation in the above case, I consent to your request that you be allowed to file a brief amicus.

Respectfully yours,

/s/ GEORGE B. COLLINS

GBC/jh

MEMO TO: Independent Bankers Association of America

DATE: May 4, 1978

SUBJECT: Feasibility of Using Bank Holding Company for Financing Bank Acquisition

FROM: Anderson & Seiberlich, Certified Public Accountants

The assumptions made in connection with the preparation of the attached exhibits were based on two banks who were approximately equal in size to the majority of the banks that are members of the Independent Bankers Association of America. The salaries and dividends paid by the bank were based upon estimated average figures for banks of this size and the insurance agency earnings were also based on an estimate of the approximate earnings of agencies related to this size of bank. Income taxes have been based on current rates and utilizing the assumption that all available surtax exemption would be used by the bank. The possibility of having the bank and the holding company file a consolidated return was considered, however, this approach was eliminated because of the possible problems that might arise in connection with the allocation of income taxes between the bank and the bank holding company. The four column schedule on each sheet provides the following information: Column No. 1—the first section of this column computes the total taxable income of the banker on an individual basis; the second section, or the cash flow projection, reflects the amount of cash available to the banker after payment of income taxes and debt principal. This, in a sense, would be the amount available for general living expenses. Column No. 2 reflects the same information for the individual, however since the dividends and insurance income is received by the corporation, his only income is his salary and the only deduction from his salary is the income tax. Column No. 3 shows the actual taxable income and cash flow of the bank holding company, while Column No. 4 is a total of columns 2 and 3 and reports the combined taxable in-

come of the banker and the corporation when the one bank holding company approach is utilized and reflects the amount of cash flow available under this approach. The comparative results then is the difference between the cash available to the banker as an individual after payment of debt and federal income taxes and Column No. 4, which is a combination of the cash available to the one bank holding company and the banker when the corporate approach is used.

Exhibit I-A

AFTER-TAX EFFECT OF BANK PURCHASE
COMPARISON BETWEEN INDIVIDUAL AND ONE-BANK HOLDING COMPANY
TWELVE-YEAR TERM LOAN

ASSUMPTIONS

1. Bank stock purchase includes a $450,000, 7-1/2% loan payable in twelve equal annual installments plus interest.
2. Size of bank - 6 million total assets.
3. All stock purchased except qualifying directors' shares.
4. Annual salary to banker $40,000.
5. Dividends paid by bank of $30,000 per year.
6. Insurance agency purchased with bank earns net annual commissions of $25,000 after paying all expenses to bank.
7. Federal income taxes based on 1977 rates and separate returns for Holding Company and Bank. Possible state and local income taxes have not been included in computations.
8. Individual's other income equals his deductions and exemptions.

	Total Twelve-Year Debt Service Period			
	Banker as	Utilizing One-Bank Holding Co.		
	Individual	Individual	Corporation	Total
TAXABLE INCOME				
Salary	$ 480,000	$ 480,000	$	$ 480,000
Insurance agency net earnings	300,000		300,000	300,000
Dividends from bank - taxable	360,000			
Interest expense	(248,100)		(248,100)	(248,100)
Total Taxable Income	$ 891,900	$ 480,000	$ 51,900	$ 531,900
CASH FLOW				
Taxable income	$ 891,900	$ 480,000	$ 51,900	$ 531,900
Non-taxable bank dividends			360,000	360,000
Debt principal repayment	(450,000)		(450,000)	(450,000)
Federal income taxes	(361,188)	(145,680)	(24,912)	(170,592)
	(1)		(2)	
Net Cash Flow	$ 80,712	$ 334,320	$ (63,012)	$ 271,308

COMPARATIVE RESULTS

Available cash flow utilizing One-Bank Holding Company	$ 271,308
Available cash flow without One-Bank Holding Company	80,712
Additional After-Tax Dollars Available Through Use of One-Bank Holding Company	$ 190,596

(1) 12-year period and no holding company does not provide adequate cash flow for living expenses.

(2) 12-year period produces deficit and requires additional sources of financing.

Exhibit I-B

AFTER TAX EFFECT OF BANK PURCHASE
COMPARISON BETWEEN INDIVIDUAL AND ONE-BANK HOLDING COMPANY
FIFTEEN-YEAR TERM LOAN

ASSUMPTIONS

1. Bank stock purchase includes a $450,000, 7-1/2% loan payable in fifteen equal annual installments plus interest.
2. Size of bank - 6 million total assets.
3. All stock purchased except qualifying directors' shares.
4. Annual salary to bank $40,000.
5. Dividends paid by bank of $30,000 per year.
6. Insurance agency purchased with bank earns net annual commissions of $25,000 after paying all expenses to bank.
7. Federal income taxes based on 1977 rates and separate returns for Holding Company and Bank. Possible state and local income taxes have not been included in computations.
8. Individuals other income equals his deductions and exemptions.

Total Fifteen-Year Debt Service Period

	Banker as Individual	Utilizing One-Bank Holding Co. Individual	Utilizing One-Bank Holding Co. Corporation	Utilizing One-Bank Holding Co. Total
TAXABLE INCOME				
Salary	$ 600,000	$ 600,000	$	$ 600,000
Insurance agency net earnings	375,000		375,000	375,000
Dividends from bank - taxable	450,000			
Interest expense	(314,700)		(314,700)	(314,700)
Total Taxable Income	$1,110,300	$ 600,000	$ 60,300	$ 660,300
CASH FLOW				
Taxable income	$1,110,300	$ 600,000	$ 60,300	$ 660,300
Non-taxable bank dividends			450,000	450,000
Debt principal repayment	(450,000)		(450,000)	(450,000)
Federal income taxes	(448,965)	(218,520)	(28,944)	(247,464)
			(1)	
Net Cash Flow	$ 211,335	$ 381,480	$ 31,356	$ 412,836

COMPARATIVE RESULTS

Available cash flow utilizing One-Bank Holding Company	$ 412,836
Available cash flow without One-Bank Holding Company	211,335
Additional After-Tax Dollars Available Through Use of One-Bank Holding Company	$ 201,501

(1) 15-year period is viable and requires no additional financing.

Exhibit II-A

AFTER TAX EFFECT OF BANK PURCHASE
COMPARISON BETWEEN INDIVIDUAL AND ONE-BANK HOLDING COMPANY
TWELVE-YEAR TERM LOAN

ASSUMPTIONS

1. Bank stock purchase includes a $900,000, 7-1/2% loan payable in twelve equa annual installments plus interest.
2. Size of bank - 12 million total assets.
3. All stock purchased except qualifying directors' shares.
4. Annual salary to banker $55,000.
5. Dividends paid by bank of $60,000 per year.
6. Insurance agency purchased with bank earns net annual commissions of $45,00(after paying all expenses to bank.
7. Federal income taxes based on 1977 rates and separate returns for Holding Company and Bank. Possible state and local income taxes have not been included in computations.
8. Individuals other income equals his deductions and exemptions.

Total Twelve-Year Debt Service Period

	Banker as Individual	Utilizing One-Bank Holding Co. Individual	Utilizing One-Bank Holding Co. Corporation	Utilizing One-Bank Holding Co. Total
TAXABLE INCOME				
Salary	$ 660,000	$ 660,000	$	$ 660,000
Insurance agency net earnings	540,000		540,000	540,000
Dividends from bank - taxable	720,000			
Interest expense	(496,200)		(496,200)	(496,200)
Total Taxable Income	$1,423,800	$ 660,000	$ 43,800	$ 703,800
CASH FLOW				
Taxable income	$1,423,800	$ 660,000	$ 43,800	$ 703,800
Non-taxable bank dividends			720,000	720,000
Debt principal repayment	(900,000)		(900,000)	(900,000)
Federal income taxes	(680,916)	(235,800)	(21,024)	(256,824)
	(1)		(2)	
Net Cash Flow	$ (157,116)	$ 424,200	$ (157,224)	$ 266,976

COMPARATIVE RESULTS

Available cash flow utilizing One-Bank Holding Company	$ 266,976
Available cash flow without One-Bank Holding Company	(157,116)
Additional After-Tax Dollars Available Through Use of One-Bank Holding Company	$ 424,092

(1) 12-year period with no holding company does not provide any cash flow for living expenses or enough for total debt retirement.

(2) 12-year period produces deficit and requires additional sources of financing.

Exhibit II-B

AFTER TAX EFFECT OF BANK PURCHASE
COMPARISON BETWEEN INDIVIDUAL AND ONE-BANK HOLDING COMPANY
FIFTEEN-YEAR TERM LOAN

ASSUMPTIONS

1. Bank stock purchase includes a $900,000, 7-1/2% loan payable in fifteen equal annual installments plus interest.
2. Size of bank - 12 million total assets.
3. All stock purchased except qualifying directors' shares.
4. Annual salary to banker $55,000.
5. Dividends paid by bank of $60,000 per year.
6. Insurance agency purchased with bank earns net annual commissions of $45,000 after paying all expenses to bank.
7. Federal income taxes based on 1977 rates and separate returns for Holding Company and Bank. Possible state and local income taxes have not been included in computations.
8. Individuals other income equals his deductions and exemptions.

Total Fifteen-Year Debt Service Period

	Banker as Individual	Utilizing One-Bank Holding Co. Individual	Corporation	Total
TAXABLE INCOME				
Salary	$ 825,000	$ 825,000		$ 825,000
Insurance agency net earnings	675,000		$ 675,000	675,000
Dividends from bank - taxable	900,000			
Interest expense	(629,400)		(629,400)	(629,400)
Total Taxable Income	$1,770,600	$ 825,000	$ 45,600	$ 870,600
CASH FLOW				
Taxable income	$1,770,600	$ 825,000	$ 45,600	$ 870,600
Non-taxable bank dividends			900,000	900,000
Debt principal repayment			(900,000)	(900,000)
Federal income taxes	(900,000)		(21,888)	(316,638)
	(845,475) (1)	(294,750)	(2)	
Net Cash Flow	$ 25,125	$ 530,250	$ 23,712	$ 553,962

COMPARATIVE RESULTS

Available cash flow utilizing One-Bank Holding Company	$ 553,962
Available cash flow without One-Bank Holding Company	25,125
Additional After-Tax Dollars Available Through Use of One-Bank Holding Company	$ 528,837

(1) 15-year period and no holding company does not provide adequate cash flow for living expenses.

(2) 15-year period is viable and requires no additional financing.

APPLICATIONS FOR THE FORMATION OF ONE BANK HOLDING COMPANY FOR THE YEARS 1970 to 1977

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res.	Financial Res. *
The Orlando Bank & Trust Company	First Florida Bankcorporation	56 Fed. Res. Bull. 286-88 (March 1970)	X			X				
Orlando, Florida	Haines City, Florida									
Tropical Bank & Trust Sebring, Florida	Barnett Banks of Florida, Inc. Jacksonville, Florida	56 Fed. R.s. Bull. 303-5 (March 1970)	X			X				
The Sutton State Bank Attica, Ohio	Mid-Ohio Bancshares, Inc. Mansfield, Ohio	56 Fed. Res. Bull. 305-7 (March 1970)	X			X				
Cumberland Bank & Trust Co. Grundy, Virginia	Dominion Bankshares Corp. Roanoke, Virginia	56 Fed. Res. Bull. 307-9 (March 1970)	X			X				
Massachusetts Bank & Trust Company Brockton, Mass.	First Massachusetts Financial Corporation Westwood, Mass.	57 Fed. Res. Bull. 337-38 (April 1971)	X				NEW BANK			
Toronto Dominion Bank of California San Francisco, Calif.	The Toronto-Dominion Bank Toronto, Ontario, Canada	57 Fed. Res. Bull. 534 (June 1971)	X				NEW BANK			
New Jersey NB Trenton, New Jersey	NJN Bancorporation Trenton, New Jersey	57 Fed. Res. Bull. 535 (June 1971)	X			X				
Industrial State Bank & Trust Co. Kalamazoo, Michigan	Great Lakes Holding Co. Kalamazoo, Michigan	57 Fed. Res. Bull. 545 (June 1971)	X			X				
West Bank & Trust Green Bay, Wisc.	United Bankshares, Inc. Green Bay, Wisc.	57 Fed. Res. Bull. 619-20 (July 1971)	X			X				
Continental Bank Phoenix, Arizona	Continental Bancor., Inc. Phoenix, Arizona	57 Fed. Res. Bull. 676 (Aug. 1971)	X			X				
First Security Bank of Glendive Glendive, Montana	First Sebanco, Inc. Glendive, Montana	57 Fed. Res. Bull. 687-88 (Aug. 1971)					NEW BANK			
Liberty State Bank & Trust Hamtramck, Michigan	United Midwest Equity, Inc. Detroit, Michigan	57 Fed. Res. Bull. 690-91 (Aug. 1971)	X			X				
The Hooksett Bank Hooksett, New Hampshire	The Suncook Bank Suncook, New Hampshire	57 Fed. Res. Bull. 694-95 (Aug. 1971)	X			X				
First Bank & Trust Company of South Bend South Bend, Indiana	FBT Corp. South Bend, Indiana	57 Fed. Res. Bull. 748-50 (Sept. 1971)	X				NEW BANK			
Northern Michigan NB Escanaba, Michigan	Northern Michigan Corp. Escanaba, Michigan	57 Fed. Res. Bull. 752-53 (Sept. 1971)	X			X				
Peoples Bank of Bloomington Bloomington, Ill.	Peoples Mid-Illinois Corporation Bloomington, Ill.	57 Fed. Res. Bull. 840-41 (Oct. 1971)	X			X				
Hilltop National Bank Casper, Wyoming	Midland Investment Corp. Casper, Wyoming	57 Fed. Res. Bull. 842-43 (Oct. 1971)	X			X				

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res. *	Financial Res. *
Linwood State Bank Kansas City, Missouri	American Bancorporation, Kansas City, Mo. Inc.	57 Fed. Res. Bull. 847-48 (Oct. 1971)	X		X					
The Security NB and Trust Company of Duncan Duncan, Oklahoma	Security Corporation	57 Fed. Res. Bull. 947-48 (Nov. 1971)	X		X					
Bank of North Lake North Lake, Wisconsin	The Grand Banks Corp. Milwaukee, Wisconsin	57 Fed. Res. Bull. 1003-4 (Dec. 1971)		X	X					X
Security Trust & Savings Bank Billings, Montana	STS Corporation Billings, Montana	57 Fed. Res. Bull. 1024-25 (Dec. 1971)	X			X				
Iowa Trust & Savings Bank Estherville, Iowa	Associated Bank Corp. Des Moines, Iowa	57 Fed. Res. Bull. 1036-37 (Dec. 1971)	X		X					
The First Pacific Bank of Chicago Chicago, Illinois	The Dai-ichi Kangyo Bank, Ltd. Tokyo, Japan	58 Fed. Res. Bull. 49-50 (Jan. 1972)	X		NEW BANK					
The Mitsubishi Bank of California Los Angeles, Calif.	The Mitsubishi Bank, Ltd. Tokyo, Japan	58 Fed. Res. Bull. 50-51 (Jan. 1972)	X		NEW BANK					
The Sanwa Bank of California San Francisco, Calif.	The Sanwa Bank, Ltd. Osaka, Japan	58 Fed. Res. Bull. 51-3 (Jan. 1972)	X		NEW BANK					
Northern Connecticut National Bank Windsor Locks, Conn.	Connecticut Bancshares Corp. New York, New York	58 Fed. Res. Bull. 66-7 (Jan. 1972)	X		X					
The Citizens NB of Torrington Torrington, Wyoming	North Platte Corp. Torrington, Wyoming	58 Fed. Res. Bull. 161 (Feb. 1972)	X		X					
Northbrook Trust & Savings Bank Northbrook, Illinois	Firstbrook Corp. Chicago, Illinois	58 Fed. Res. Bull. 162-4 (Feb. 1972)		X	X					X
Carlton National Bank Carlton, Minnesota	Carlton Agency, Inc. Carlton, Minnesota	58 Fed. Res. Bull. 168-69 (Feb. 1972)		X	X					X
State Bank of Clearing Chicago, Illinois	Clearing Bancorporation, Chicago, Ill. Inc.	58 Fed. Res. Bull. 292 (March 1972)	X		X					
Commerce Union Bank Nashville, Tennessee	Tennessee Valley Bancorp., Inc. Nashville, Tennessee	58 Fed. Res. Bull. 303 (March 1972)	X				X			
French Bank of Calif. San Francisco, Calif.	Banque Nationale deParis Paris, France	58 Fed. Res. Bull. 311-13 (March 1972)	X		NEW BANK					
The Island Trust Co. Newport, Rhode Island	Newport Savings & Loan Association Newport, Rhode Island	58 Fed. Res. Bull. 313-15 (March 1972)	X		NEW BANK					
Bank of Belleville Belleville, Illinois	Belleville Bancshares, Inc. Belleville, Illinois	58 Fed. Res. Bull. 411-12 (April, 1972)	X		X					

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res. *	Financial Res. *
First National Bank of Pinedale Pinedale, Wyoming	First National Bank Holding Co., Inc. Pinedale, Wyoming	58 Fed. Res. Bull. 473-74 (May 1972)	X		X					
Hume Banking Company Hume, Missouri	Hume Bancshares, Inc. Hume, Missouri	58 Fed. Res. Bull. 488 (May 1972)	X		X					
Peoples Bank of Port Huron Port Huron, Michigan	Midland Mortgage Corp. and Port Huron Financial Detroit, Michigan Co.	58 Fed. Res. Bull. 593-95 (June 1972)	X		X					
Kewanee NB Kewanee, Illinois	Kewanee Investing Co. Kewanee, Illinois	58 Fed. Res. Bull. 665 (July 1972)	X		X					
Carlton NB Carlton, Minnesota	Carlton Agency, Inc. Carlton, Minnesota	58 Fed. Res. Bull. 672-73 (July 1972)	X		X					
The Cheyenne County SB St. Francis, Kansas	Cheyenne County Investment Co., Inc. St. Francis, Kansas	58 Fed. Res. Bull. 722 (Aug. 1972)	X		X					
Nebraska State Bank South Sioux City, Neb.	Y. B. Corporation South Sioux City, Neb.	58 Fed. Res. Bull. 732-33 (Aug. 1972)	X		X					
Bank of Cody Cody, Nebraska	Cody Agency, Inc. Lincoln, Nebraska	58 Fed. Res. Bull. 736-37 (Aug. 1972)	X		X					
Farmers State Bank Winona, Kansas	Western Kansas Investment Corp., Inc. Winona, Kansas	58 Fed. Res. Bull. 737-38 (Aug. 1972)	X		X					
The North Shore NB of Chicago Chicago, Illinois	North Shore Capital Corp. Chicago, Illinois	58 Fed. Res. Bull. 809-11 (Sept. 1972)		X			X		X	X
Bank of Brady Brady, Nebraska	Capital Management, Inc. Aurora, Nebraska	58 Fed. Res. Bull. 842-43 (Sept. 1972)	X		X					
North Valley SB Thorton, Colorado	Citizens Investment Company Thorton, Colorado	58 Fed. Res. Bull. 843 (Sept. 1972)	X		X					
Wichita SB Wichita, Kansas	Graham-Michaelis Financial Corp. Wichita, Kansas	58 Fed. Res. Bull. 920 (Oct. 1972)	X		X					
Bancodi Roma Chicago, Illinois	Banco Di Roma S.P.A. Rome, Italy	58 Fed. Res. Bull. 930-31 (Oct. 1972)	X		NEW BANK					
Rocky Mountain Bank and Trust Co. Fort Collins, Colorado	L&L Holding Company Fort Collins, Colorado	58 Fed. Res. Bull. 932-33 (Oct. 1972)	X		X					
Ranchers Bank Quartz Hill, Calif.	American Bancorporation Los Angeles, California	58 Fed. Res. Bull. 1026-27 (Dec. 1972)		X	X				X	X X X X
American NB and Trust Co. of Chicago Chicago, Illnois	Walter Heller International Corp. Chicago, Illinois	59 Fed. Res. Bull. 463-68 (June 1973)	X				X			
Fremont County Savings Bank Sidney, Iowa	Southwest Company Sidney, Iowa	59 Fed. Res. Bull. 599-600 (Aug. 1973)	X		X					

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	Competitiveness	DENIAL BASED ON Mgrial. Res.	*	Financial Res.	*
Union Bank Los Angeles, Calif.	Union Bancorp, Inc. Los Angeles, Calif.	59 Fed. Res. Bull.	X				X					
The Chester NB Chester, New York	Cedar Holdings Limited, Bankers London, England	60 Fed. Res. Bull. 37-9 (Jan. 1974)	X		X							
Big Horn County SB Hardin, Montana	BHCO, Inc. Hardin, Montana	60 Fed. Res. Bull. 123-24 (Feb. 1974)		X	X						X	
First Western Bank and Trust Company Los Angeles, Calif.	Lloyds Bank Limited and Lloyds First Western Corp. London, England	60 Fed. Res. Bull. 125-26 (Feb. 1974)	X				X					
Northbrook Trust and Savings Bank Northbrook, Illinois	Norbank, Inc. Chicago, Illinois	60 Fed. Res. Bull. 127-28 (Feb. 1974)		X	X						X	
The Farmers State Bank Lindsborg, Kansas	Lindsborg Bancshares, Lindsborg, Kansas Inc.	60 Fed. Res. Bull. 147-48 (Feb. 1974)	X		X							
Peoples State Bank Rossville, Kansas	Peoples State Bankshares, Rossville, Kansas Inc.	60 Fed. Res. Bull. 286-87 (April 1974)	X		X							
Exchange State Bank Adair, Iowa	The Adair Corporation Adair, Iowa	60 Fed. Res. Bull. 309-10 (April 1974)		X	X				X		X	X
The FNB in Aurora Aurora, Nebraska	Aurora First National Co. Aurora, Nebraska	60 Fed. Res. Bull. 362-63 (May 1974)		X	X						X	
Concordia Bank Concordia, Missouri	Concordia Banc-Management, Kansas City, Mo. Inc.	60 Fed. Res. Bull. 363-64 (May 1974)	X		X							
City NB of Hastings Hastings, Nebraska	Hastings City National Co. Lincoln, Nebraska	60 Fed. Res. Bull. 364-65 (May 1974)	X		X							
West Fargo SB West Fargo, N. Dakota	First Dakota Bancorporation, Inc. Fargo, North Dakota	60 Fed. Res. Bull. 590-91 (Aug. 1974)	X		X							
The Bank of Bronson Bronson, Kansas	Bronson Agency, Inc. Bronson, Kansas	60 Fed. Res. Bull. 666-67 (Sept. 1974)	X		X							
Capital City SB Des Moines, Iowa	Central States Bancor, Des Moines, Iowa Inc.	60 Fed. Res. Bull. 667-69 (Sept. 1974)		X		X					X	
The Merchants NB of Mobile Mobile, Alabama	Southland Bancorporation Mobile, Alabama	60 Fed. Res. Bull. 669-70 (Sept. 1974)		X		X		X				
Bank of Drummond Drummond, Oklahoma	Drummond Bancshares, Inc. Drummond, Oklahoma	60 Fed. Res. Bull. 728-29 (Oct. 1974)	X		X							
Bank of Locust Grove Locust Grove, Oklahoma	Locust Grove Banshares, Inc. Locust Grove, Oklahoma	60 Fed. Res. Bull. 729-31 (Oct. 1974)	X		X							
Water Tower Trust & Savings Bank Chicago, Illinois	Water Tower Financial Group, Inc. Chicago, Illinois	60 Fed. Res. Bull. 731-32 (Oct. 1974)		X			X		X		X	
The FNB of Rantoul Rantoul, Illinois	First Rantoul Corp. Urbana, Illinois	60 Fed. Res. Bull. 773-74 (Nov. 1974)	X		X							

5(a)(4)

A-12

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	Competitiveness	DENIAL BASED ON Mgrial. Res.	*	Financial Res.	*
Citizens State Bank Iowa Falls, Iowa	Hardin Bancorp Iowa Falls, Iowa	60 Fed. Res. Bull. 774-75 (Nov. 1974)	X		X							
The First State Bank Thayer, Kansas	Neosho Bancshares, Inc. Thayer, Kansas	60 Fed. Res. Bull. 775-76 (Nov. 1974)		X	X						X	X
The Ogle County NB of Oregon Oregon, Illinois	Oregon Corporation Oregon, Illinois	60 Fed. Res. Bull. 776-77 (Nov. 1974)	X		X							
Tri-State Bank of East Dubuque East Dubuque, Illinois	Tri-State Bancorporation, Inc. East Dubuque, Illinois	60 Fed. Res. Bull. 777-78 (Nov. 1974)		X	X				X	X	X	X
Farmers SB of Mountain Lake Mountain Lake, Minn.	Farmers State Corporation Mountain Lake, Minnesota	60 Fed. Res. Bull. 787-88 (Nov. 1974)		X	X						X	
Farmers SB of Calhan Calhan, Colorado	Pieper Bancorp, Inc. Calhan, Colorado	60 Fed. Res. Bull. 788-90 (Nov. 1974)	X		X							
Commonwealth NB of Dallas Dallas, Texas	Commonwealth Bancshares, Inc. Dallas, Texas	60 Fed. Res. Bull. 864-65 (Dec. 1974)		X	X						X	X
Bank of Canton Canton, Oklahoma	Canton Bancorporation Canton, Oklahoma	61 Fed. Res. Bull. 345 (Jan. 1975)		X	X						X	
SB of St. Anthony Village St. Anthony Village, Mn.	Pentagon Bankshares, Inc. Minneapolis, Minnesota	61 Fed. Res. Bull. 35-6 (Jan. 1975)		X	X				X		X	X
Peoples Savings Bank Elma, Iowa	Peoples Bancorporation Hampton, Iowa	61 Fed. Res. Bull. 36-7 (Jan. 1975)		X	X						X	X
The Farmers and Merchants SB of Dexter Dexter, Kansas	Dexter Banking Co. Dexter, Kansas	61 Fed. Res. Bull. 103-4 (Feb. 1975)		X	X						X	X
Firstbank of Marietta Marietta, Oklahoma	Firstbank Holding Co. Marietta, Oklahoma	61 Fed. Res. Bull. 104-6 (Feb. 1975)	X		X							
The NB of Commerce Altus, Oklahoma	NBC Corporation Altus, Oklahoma	61 Fed. Res. Bull. 106-7 (Feb. 1975)	X		X							
Bank of Naperville Naperville, Illinois	First Ogden Corporation Naperville, Illinois	61 Fed. Res. Bull. 172-74 (March 1975)		X	X							
Home State Bank Erie, Kansas	Erie Bankshares, Inc. Erie, Kansas	61 Fed. Res. Bull. 246-47 (April 1975)		X	X				X	X	X	X
Banco Mercantil of Puerto Rico, Inc. San Juan, Puerto Rico	The Bank of Nova Scotia Toronto, Ontario	61 Fed. Res. Bull. 309-10 (May 1975)	X		X							
The Goose River Bank Mayville, North Dakota	Goose River Holding Co. Mayville, N. Dakota	61 Fed. Res. Bull. 310-11 (May 1975)	X		X							
Dexter National Bank Dexter, Missouri	Midwest Bancshares, Inc. Poplar Bluffs, Missouri	61 Fed. Res. Bull. 311-12 (May 1975)		X	X						X	X

A-13

Engaging in Prohibited Operations

5(a)(5)

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	Competitiveness	DENIAL BASED ON Mgrial. Res.	*	Financial Res.	*
York State Bank York, Nebraska	York State Company York, Nebraska	61 Fed. Res. Bull. 312-13 (May 1975)	X		X							
The Beatrice NB and Trust Company Beatrice, Nebraska	Beatrice National Corp. Beatrice, Nebraska	61 Fed. Res. Bull. 376 (June 1975)	X		X							
The FNB of Gladstone Gladstone, Missouri	International Bancshares, Gladstone, Mo. Inc.	61 Fed. Res. Bull. 376-77 (June 1975)	X		X							
Stockyards Bank Oklahoma City, Okla.	SYB Corporation Oklahoma City, Okla.	61 Fed. Res. Bull. 378 (June 1975)	X		X							
The FNB of Gorman Gorman, Texas	Cross Timber Bancshares, Gorman, Texas Inc.	61 Fed. Res. Bull. 441-43 (July, 1975)		X	X						X	X
Farmers SB of Mountain Lake Mountain Lake, Minn.	Farmers State Corp. Mountain Lake, Minn.	61 Fed. Res. Bull. 451-53 (July 1975)	X		X							
Forest Park NB Forest Park, Illinois	Forest Park National Corp. Forest Park, Illinois	61 Fed. Res. Bull. 517-18 (Aug. 1975)		X	X				X		X	
Scribner Bank Scribner, Nebraska	Scribner Banshares, Inc. Scribner, Nebraska	61 Fed. Res. Bull. 518-19 (Aug. 1975)		X	X				X	X	X	X
Farmers State Bank Winner, South Dakota	Winner Banshares, Inc. Winner, South Dakota	61 Fed. Res. Bull. 519-20 (Aug. 1975)		X	X				X	X	X	X
Haxtun Community Bank Haxtun, Colorado	Community Insurance Agency, Haxtun, Colorado Inc.	61 Fed. Res. Bull. 588-89 (Sept. 1975)	X		X							
First Security Bank Sutherland, Nebraska	First Security Corp. Sutherland, Nebraska	61 Fed. Res. Bull. 589-90 (Sept. 1975)	X		X							
First Security NB and Trust Company of Lexington Lexington, Kentucky	First Security Corp. of Kentucky Lexington, Kentucky	61 Fed. Res. Bull. 590-91 (Sept. 1975)	X				X					
The FNB of New Richmond New Richmond, Wisc.	One Corporation New Richmond, Wisconsin	61 Fed. Res. Bull. 671-72 (Oct. 1975)		X	X						X	X
The Downs NB Downs, Kansas	Downs Bancshares, Inc. Downs, Kansas	61 Fed. Res. Bull. 673-75 (Oct. 1975)		X	X						X	X
Industrial SB Kansas City, Kansas	Industrial Bancshares, Inc. Kansas City, Kansas	61 Fed. Res. Bull. 675-76 (Oct. 1975)	X		X							
The Citizens NB of Charles City Charles City, Iowa	Citizens Bancorporation Charles City, Iowa	61 Fed. Res. Bull. 805-6 (Nov. 1975)		X	X						X	X
Citizens SB Maud, Oklahoma	Citizens Bancorp. Maud, Oklahoma	61 Fed. Res. Bull. 806-7 (Nov. 1975)		X	X				X	X	X	X
Commercial NB and Trust Co. Grand Island, Nebraska	Commercial Bankshares, Inc. Grand Island, Nebraska	61 Fed. Res. Bull. 807-8 (Nov. 1975)	X		X							

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	Competitiveness	DENIAL BASED ON Mgrial. Res.	*	Financial Res.	*
1st Bank & Trust Broken Bow, Oklahoma	Southeastern Bancshares, Inc. Broken Bow, Oklahoma	61 Fed. Res. Bull. 808-10 (Nov. 1975)	X		X							
The Harlan National Bank Harlan, Iowa	Harlan National Company Harlan, Iowa	61 Fed. Res. Bull. 817-18 (Nov. 1975)		X	X						X	
First State Bank of Buffalo Buffalo, North Dakota	First Buffalo Holding Co. Buffalo, North Dakota	61 Fed. Res. Bull. 882 (Dec. 1975)	X		X							
Southwestern Bank & Trust Company Oklahoma City, Okla.	SWB Corporation Oklahoma City, Oklahoma	61 Fed. Res. Bull. 883 (Dec. 1975)	X		X							
FNB of Rochester Rochester, New Hamp.	Profile Bankshares, Inc. Rochester, New Hampshire	61 Fed. Res. Bull. 901-3 (Dec. 1975)	X		X							
FNB of Wayne Wayne, Nebraska	First National Agency, Inc. Wayne, Nebraska	61 Fed. Res. Bull. 900-1 (Dec. 1975)	X		X							

[redacted]

* Denotes language "source of strength" used.

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res.	*	Financial Res.	*
Farmers State Bank Allen, Okla.	Allen Bancshares, Inc. Allen, Okla.	62 Fed. Res. Bull. 48-49 (Jan. 1976)		X	X						X	X
Citizens Valley Bank Albany, Ore.	Citizens Bancorp Albany, Ore.	62 Fed. Res. Bull. 49-50 (Jan. 1976)	X			X						
Penn Square Bank N. A. Okla City, Okla.	First Penn Corp.	62 Fed. Res. Bull. 50-51 (Jan. 1976)	X		X							
Bank of Gallatin Gallatin, Tenn.	Gallatin Bancshares, Inc. Gallatin, Tenn.	62 Fed. Res. Bull. 51-52 (Jan. 1976)	X		X							
FNB of Lincolnwood Lincolnwood, Ill.	First Lincolnwood Corp. Lincolnwood, Ill.	62 Fed. Res. Bull. 153-54 (Feb. 1976)		X		X					X	X
State NB of Maryland Rockville, Maryland	Capital First Corp. Philadelphia, Penn.	62 Fed. Res. Bull. 252-53 (Mar. 1976)		X	X				X		X	X
Northwest SB Arvada, Colorado	Mountain Financial Services, Inc. Denver, Colo.	62 Fed. Res. Bull. 254-55 (Mar. 1976)	X		X							
Town North NB Farmers Branch, Tex.	CU Bank Shares, Inc. Dallas, Texas	62 Fed. Res. Bull. 364-65 (April, 1976)	X		X							
The FNB of Pine City Pine City, Mn.	P.B.C., Inc. Pine City, Mn.	62 Fed. Res. Bull. 365-66 (April 1976)		X	X						X	X
The Exchange Bank Skiatook, Okla.	Exchange Bancshares, Inc. Skiatook, Okla.	62 Fed. Res. Bull. 447-48 (May 1976)	X		X							
The Pierre NB Pierre, S. Dakota	South Dakota Bancshares, Inc., Pierre, S. Dak.	62 Fed. Res. Bull. 448-49 (May 1976)	X		X							
The FNB of Starbuck Starbuck, Mn.	Starbuck Bancshares, Inc. Starbuck, Mn.	62 Fed. Res. Bull. 450-52 (May, 1976)		X	X						X	X
SB of Hawley Hawley, Mn.	Bankshares of Hawley, Inc. Hawley, Mn.	62 Fed. Res. Bull. 610-11 (July 1976)		X	X						X	
Citizens SB of El Dorado El Dorado, Kansas	El Dorado Bancshares, Inc. Prairie Village, Kansas	62 Fed. Res. Bull. 611-12 (July 1976)	X		X							
Security NB of New Jersey Newark, New Jersey	Fiduciary Investment Co. of New Jersey Newark, New Jersey	62 Fed. Res. Bull. 612-14 (July 1976)	X		X							
FNB of Puerto Rico Hato Rey, Puerto Rico	Banco de Santander, S.A. Satander, Spain	62 Fed. Res. Bull. 690-91 (Aug. 1976)	X		X							
Citizens NB of Greater St. Louis Maplewood, Missouri	CN Banc Holding Corp. Maplewood, Missouri	62 Fed. Res. Bull. 691-92 (Aug. 1976)		X	X				X		X	
Columbia NB of Cgo. Chicago, Illinois	Columbia Holding Corp. Chicago, Illinois	62 Fed. Res. Bull. 692-94 (Aug. 1976)		X		X					X	X

*denotes language "source of strength" used as basis for denial

5(a)(8)

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res.	*	Financial Res.	*
First Westroads Bank, Inc. Omaha, Nebraska	United Bancshares of Nebraska, Inc. Lincoln, Nebraska	62 Fed. Res. Bull. 694 (Aug. 1976)	X		X							
Citibank and Trust Co. of Lincoln Lincoln, Nebraska	Citi Bancorp. Lincoln, Nebraska	62 Fed. Res. Bull.	X		X							
The Alexandria Bank Company Alexandria, Ohio	CUbanc Corp. Columbus, Ohio	9 Fed. Res. Bull 792-93 (Sept. 1976)	X		X							
The FNB of International Falls International Falls,	International Bancorporation, St. Paul, Mn. Mn.	9 Fed. Res. Bull. 793 (Sept. 1976)	X		X							
The Farmers NB of Webster City Webster City, Iowa	Agri-Bank Corp. Webster City, Iowa	10 Fed. Res. Bull. 852-53 (Oct. 1976)	X		X							
FNB in Wewoka Wewoka, Oklahoma	First Wewoka Bancorporation, Inc. Wewoka, Oklahoma	10 Fed. Res. Bull. 853-54 (Oct. 1976)		X	X						X	X
Lisco SB Lisco, Nebraska	Lisco State Company Lisco, Nebraska	10 Fed. Res. Bull. 859-60 (Oct. 1976)	X		X							
Bank of Clarendon Hills Clarendon Hills, Ill.	Charter Clarendon Bancorporation, Inc. Northfield, Ill.	11 Fed. Res. Bull. 949-50 (Nov. 1976)	X		X							
The Union Bank Halliday, N. Dak.	Union Holding Company Halliday, N. Dakota	11 Fed. Res. Bull. 951-52 (Nov. 1976)		X	X				X	X	X	X
The Citizens Bank of Utica Utica, Kansas	Utica Agency, Inc. Utica, Kansas	11 Fed. Res. Bull. 953-54 (Nov. 1976)	X		X							
Bank of the Commonwealth Detroit, Michigan	The First Arabian Corp. Paris, France	63 Fed. Res. Bull. 66-7 (Jan. 1977)	X				X					
The FNB of Gaylord Gaylord, Kansas	Gaylord Bankshares, Inc. Gaylord, Kansas	63 Fed. Res. Bull.		X					X	X	X	X
Scribner Bank Scribner, Nebraska	Scribner Bancshares, Inc. Scribner, Nebraska	63 Fed. Res. Bull. 76-7 (Jan. 1977)	X		X							
American NB of Midwest City Midwest City, Okla.	American National Bancshares, Inc. Midwest City, Okla	63 Fed. Res. Bull. 149-50 (Feb. 1977)		X	X				X		X	X
Daiwa Bank Trust Co. New York, New York	The Daiwa Bank, Ltd. Osaka, Japan	63 Fed. Res. Bull. 151-52 (Feb. 1977)	X		X new bank							
Lakeview Trust & Savings Bank Chicago, Illinois	Lakeview Bancorp, Inc. Northbrook, Illinois	63 Fed. Res. Bull. 154-56 (Feb. 1977)		X			X				X	

5(a)(9)

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res.	*	Financial Res.	*
Bank of Ozark Ozark, Arkansas	Banstock One, Inc. Ozark, Arkansas	63 Fed. Res. Bull. 267-68 (Mar. 1977)		X	X						X	X
Bank of the Southwest Dodge City, Kansas	Great Southwest Ban Corp., Inc. Dodge City, Kansas	63 Fed. Res. Bull. 274-75 (Mar. 1977)		X	X						X	X
Audubon State Bank Audubon, Iowa	Audubon Investment Co. Audubon, Iowa	63 Fed. Res. Bull. 401-02 (April 1977)	X		X							
Heritage FNB of Lockport Lockport, Illinois	Old Canal Bankshares, Inc. Lockport, Illinois	63 Fed. Res. Bull. 407-08 (April 1977)		X		X						
The First National Bank of Sibley Sibley, Iowa	Sibley Bancorporation Sibley, Iowa	63 Fed. Res. Bull. 499-50 (May 1977)		X	X				X	X	X	X
Yoakum County SB Denver City, Texas	Yoakum County Bancshares, Inc. Denver City, Texas	63 Fed. Res. Bull. 509-10 (May 1977)	X		X							
Farmers Savings Bank Fremont, Iowa	Mahaska Investment Co. Oskaloosa, Iowa	63 Fed. Res. Bull. 579-81 (June 1977)		X	X			X				
Stock Yards Bank Oklahoma City, Okla.	SYB Corporation Oklahoma City, Okla.	63 Fed. Res. Bull. 587-90 (June 1977)	X			X						
European-American Bank & Trust Co. New York, New York	European-American Bancorp New York, New York	63 Fed. Res. Bull. 595-602 (June 1977)	X				X					
Banco de Bogota Trust Company New York, New York	Banco de Bogota and Banbogota, Inc. Bogota, Columbia	63 Fed. Res. Bull. 671-72 (July 1977)	X				X					
Granite Falls Bank Granite Falls, Mn.	Granite Holding Corp. Granite Falls, Mn.	63 Fed. Res. Bull. 677-78 (July 1977)		X	X				X		X	
First National Bank in Anoka Anoka, Mn.	Chalfen-Holiday, Inc. Minneapolis, Mn.	63 Fed. Res. Bull. 691-92 (July 1977)	X		X							
Bank of Ionia Ionia, Missouri	Industrial Loan & Investment Company Sedalia, Missouri	63 Fed. Res. Bull. 693-94 (July 1977)	X		X							
Northwest Bank Oklahoma City, Okla.	Midland Capital Co. Oklahoma City, Okla.	63 Fed. Res. Bull. 694-96 (July 1977)	X		X							
Banco Central y Economias Hato Rey, Puerto Rico	Banco Central, S.A. Madrid, Spain	63 Fed. Res. Bull. 741-42 (Aug. 1977)	X			X						
The Gypsum Valley National Bank Gypsum, Kansas	Berbanc, Inc. Salina, Kansas	63 Fed. Res. Bull. 742-43 (Aug. 1977)	X		X							

BANK NAME	HOLDING CO.	CITE	APPROVED	DENIED	ASSETS - MIL. $ Under 50	50-100	100+	DENIAL BASED ON Competitiveness	Mgrial. Res.	*	Financial Res.	*
Peotone Bank and Trust Company Peotone, Illinois	Peotone Bancorp, Inc. Peotone, Illinois	63 Fed. Res. Bull. 748-49 (Aug. 1977)	X		X							
North Side Bank Omaha, Nebraska	Preferred Management Co. Omaha, Nebraska	63 Fed. Res. Bull. 756-57 (Aug. 1977)	X		X							
Southern Bank & Trust Company Savannah, Ga.	Southern Bank Holding Company Savannah, Ga.	63 Fed. Res. Bull. 853-54 (Sept. 1977)	X		X							
The FNB of Guthrie Guthrie, Oklahoma	First Guthrie Bancshares, Inc. Guthrie, Oklahoma	63 Fed. Res. Bull. 854-55 (Sept. 1977)	X		X							
The Jackson State Bank Jackson, Wyoming	Jackson Hole Banking Corporation Jackson, Wyoming	63 Fed. Res. Bull. 934-35 (Oct. 1977)		X	X				X	X	X	X
The FNB of Holyoke Holyoke, Colorado	Phillipsco, Inc. Denver, Colorado	63 Fed. Res. Bull. 936-37 (Oct. 1977)	X		X							
Twin Lakes SB Wichita, Kansas	Twin Lakes Financial Cor. Wichita, Kansas	63 Fed. Res. Bull. 937-38 (Oct. 1977)	X		X							
Swift County Bank Benson, Mn.	Benson Bancshares, Inc. Benson, Mn.	63 Fed. Res. Bull. 1009-1011 (Nov. 1977)	X		X							
The Lawndale Trust & Savings Bank Chicago, Ill.	GEMA Financial Corp. Chicago, Ill.	63 Fed. Res. Bull. 1014-15 (Nov. 1977)	X		X							
Delhi Savings Bank Delhi, Iowa	First of Iowa Bank Shares Inc. Delhi, Iowa	63 Fed. Res. Bull. 1015-17 (Nov. 1977)		X	X				X	X	X	X
Lakeview Trust & Savings Bank Chicago, Illinois	Lakeview Bancorp, Inc. Northbrook, Ill.	63 Fed. Res. Bull. 1017-19 (Nov. 1977)	X				X					
Century National Bank and Trust Co. New York, New York	Banco Exterior de Espana, S. A. Madrid, Spain	63 Fed. Res. Bull. 1079 (Dec. 1977)	X		X							
Chickasha Bank & Trust Co. Chickasha, Oklahoma	Chickasha Bancshares, Inc. Chickasha, Oklahoma	63 Fed. Res. Bull. 1082-83 (Dec. 1977)		X	X				X		X	X
Citizens State Bank Hartford City, Ind.	Citizens Bancorp, Inc. Hartford City, Indiana	63 Fed. Res. Bull. 1083-85 (Dec. 1977)		X	X			X				
Republic NB of Englewood Englewood, Colo.	Republic Bancorporation, Inc. Englewood, Colorado	63 Fed. Res. Bull. 1098-99 (Dec. 1977)		X	X				X	X	X	X

Source: Federal Reserve Bulletin (1970-1976)

BANK HOLDING COMPANIES

Year	Section	Approved	Denied
1976	3 (a) (1)	52	12
	3 (a) (3)	82	10
	3 (a) (5)	4	1
	4 (c) (8)	71 (134)	2
1975	3 (a) (1)	50	15
	3 (a) (3)	71	17
	3 (a) (5)	8	
	4 (c) (8)	78 (91)	5 (12)
	4 (d)	1	1
1974	3 (a) (1)	72	16
	3 (a) (3)	177	14
	3 (a) (5)	6	3
	4 (c) (8)	130 (255)	13 (23)
	4 (c) (12)	1	---
	4 (d)	1	1
1973	3 (a) (1)	57	1
	3 (a) (3)	288	18
	3 (a) (5)	9	1
	4 (c) (8)	332	143
	4 (d)	3	---
1972	3 (a) (1)	68	11
	3 (a) (3)	248	18
	3 (a) (5)	2	---
	4 (c) (8)	59	15
	4 (d)	4	2
1971	3 (a) (1)	51	2
	3 (a) (3)	143	15
	4 (c) (8)	6	1
	4 (c) (12)	1	---
	4 (d)	2	---
1970	3 (a) (1)	31	---
	3 (a) (3)	113	9
1969	3 (a) (1)	21	---
	3 (a) (3)	66	3
1968	3 (a) (1)	9	---
	3 (a) (3)	19 (33)	2
1967	3 (a) (1)	10	1
	3 (a) (3)	11 (16)	2
1966	3 (a) (1)	6	2
	3 (a) (3) & 3 (a) (2)	12 (15)	2
1965	3 (a) (1)	2	1
	3 (a) (2)	9	2
1964	3 (a) (1)	4	1
	3 (a) (2)	7 (8)	---
1963	3 (a) (1)	2	1
	3 (a) (2)	5 (7)	2 (3)
	4 (c) (6)	2	---
1962	3 (a) (1)	5	2
	3 (a) (2)	7 (16)	3
1961	3 (a) (1)	2	---
	3 (a) (2)	8 (9)	2 (3)
	4 (c) (6)	3	---

Year	Section	Approved	Denied
1960	3 (a) (2)	9 (13)	1
	4 (c) (6)	1	3
1959	3 (a) (1)	1	---
	3 (a) (2)	9	---
	4 (c) (6)	15	2
1958	3 (a) (1)	1	3
	3 (a) (2)	3 (4)	1
	4 (c) (6)	1	1
1956 & 1957	3 (a) (2)	6 (7)	2
	4 (c) (6)	---	1

Multiple applications in parentheses.

Source: Annual Reports of the Board of Governors of the Federal Reserve System to Congress for the years 1956 to 1976.